

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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**SENATE BILL 668
Finance Committee Substitute Adopted 6/12/03
Third Edition Engrossed 6/18/03
House Committee Substitute Favorable 6/25/03**

Short Title: Wine Shippers Permits and Brewery Permits.

(Public)

Sponsors:

Referred to:

April 2, 2003

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE ALCOHOLIC BEVERAGE CONTROL
2 COMMISSION TO ISSUE WINE SHIPPERS PERMITS TO ALLOW THE
3 DIRECT SHIPMENT OF WINES TO RESIDENTS OF NORTH CAROLINA
4 AND TO ESTABLISH A MECHANISM FOR COLLECTING THE TAXES DUE
5 ON WINE SHIPPED TO NORTH CAROLINA, AND TO INCREASE THE
6 CEILING THAT A SMALL BREWERY MAY PRODUCE WITHOUT BEING
7 REQUIRED TO GO THROUGH A MALT BEVERAGE DISTRIBUTOR.
8

9 The General Assembly of North Carolina enacts:

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

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

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

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

23 **SECTION 2.** Chapter 18B of the General Statutes is amended by adding a
24 new section to read:

25 **"§ 18B-1001.1 Authorization of wine shipper permit.**

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

38 (b) A wine shipper permittee that ships to addresses in the State more than 1,000
39 cases of wine in a calendar year must appoint at least one wholesaler to offer and sell
40 the products of the wine shipper permittee under Article 12 of this Chapter if the wine
41 shipper permittee is contacted by a wholesaler that wishes to sell the products of the
42 wine shipper permittee. This provision shall not be construed to require the wine shipper
43 permittee to appoint the wholesaler that originally contacted the wine shipper permittee.
44 Wine purchased by a resident of the State at the premises of the wine shipper permittee

1 and shipped to an address in the State under G.S. 18B-109(b) shall not be included in
2 calculating the total of 1,000 cases per year.

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

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

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

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

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

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

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

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

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

30 **"§ 18B-1001.2. Additional wine shipping requirements.**

31 (a) A wine shipper permittee shall:

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

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

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

40 **SECTION 4.** G.S. 18B-109 reads as rewritten:

41 **"§ 18B-109. Direct shipment of alcoholic beverages into State.**

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

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

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

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

15 **SECTION 5.** G.S. 18B-1001 reads as rewritten:

16 "**§ 18B-1001. Kinds of ABC permits; places eligible.**

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

19 ...

20 (3) On-Premises Unfortified Wine Permit. – An on-premises unfortified
21 wine permit authorizes the retail sale of unfortified wine for
22 consumption on the premises, either alone or mixed with other
23 beverages, and the retail sale of unfortified wine in the manufacturer's
24 original container for consumption off the premises. It also authorizes
25 the holder of the permit to ship unfortified wine in closed containers to
26 individual purchasers inside and outside the State. Orders received by
27 a winery by telephone, Internet, mail, facsimile, or other off-premises
28 means of communication shall be shipped pursuant to a wine shipper
29 permit and not pursuant to this subdivision. The permit may be issued
30 for any of the following:

- 31 a. Restaurants;
- 32 b. Hotels;
- 33 c. Eating establishments;
- 34 d. Private clubs;
- 35 e. Convention centers;
- 36 f. Cooking schools;
- 37 g. Community theatres;
- 38 h. Wineries.

39 (4) Off-Premises Unfortified Wine Permit. – An off-premises unfortified
40 wine permit authorizes the retail sale of unfortified wine in the
41 manufacturer's original container for consumption off the premises and
42 it authorizes the holder of the permit to ship unfortified wine in closed
43 containers to individual purchasers inside and outside the State. The
44 permit may be issued for retail businesses. The permit may also be

1 issued for a winery for sale of its own unfortified wine. Orders
2 received by a winery by telephone, Internet, mail, facsimile, or other
3 off-premises means of communication shall be shipped pursuant to a
4 wine shipper permit and not pursuant to this subdivision.

5 (5) On-Premises Fortified Wine Permit. – An on-premises fortified wine
6 permit authorizes the retail sale of fortified wine for consumption on
7 the premises, either alone or mixed with other beverages, and the retail
8 sale of fortified wine in the manufacturer's original container for
9 consumption off the premises. It also authorizes the holder of the
10 permit to ship fortified wine in closed containers to individual
11 purchasers inside and outside the State. Orders received by a winery
12 by telephone, Internet, mail, facsimile, or other off-premises means of
13 communication shall be shipped pursuant to a wine shipper permit and
14 not pursuant to this subdivision. The permit may be issued for any of
15 the following:

- 16 a. Restaurants;
- 17 b. Hotels;
- 18 c. Private clubs;
- 19 d. Community theatres;
- 20 e. Wineries;
- 21 f. Convention centers.

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

32 ..."

33 **SECTION 6.** G.S. 18B-1101(3) reads as rewritten:

34 "(3) Ship its wine in closed containers to individual purchasers inside and
35 outside this ~~State~~; State in accordance with the provisions of G.S.
36 18B-1001, 18B-1001.1, and 18B-1001.2 and other applicable
37 provisions of this Chapter;".

38 **SECTION 7.** G.S. 18B-1102(3) reads as rewritten:

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

43 **SECTION 8.** G.S. 105-113.68 is amended by adding a new subdivision to

44 read:

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

3 **SECTION 9.** G.S. 105-113.73 reads as rewritten:

4 "**§ 105-113.73. Misdemeanor.**

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

7 **SECTION 10.** G.S. 105-113.83(b) reads as rewritten:

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

22 **SECTION 11.** G.S. 105-113.84 reads as rewritten:

23 "**§ 105-113.84. Report of resident brewery, resident winery, ~~or nonresident~~**
24 **vendor, vendor, or wine shipper permittee.**

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

32 **SECTION 12.** G.S. 105-164.3(9) reads as rewritten:

33 "(9) Engaged in business. – Maintaining, occupying or using permanently
34 or temporarily, directly or indirectly, or through a subsidiary or agent,
35 by whatever name called, any office, place of distribution, sales or
36 sample room or place, warehouse or storage place, or other place of
37 business, for the selling or delivering of tangible personal property for
38 storage, use or consumption in this State, or permanently or
39 temporarily, directly or through a subsidiary, having any
40 representative, agent, salesman, canvasser or solicitor operating in this
41 State in such selling or delivering, and the fact that any corporate
42 retailer, agent or subsidiary engaged in business in this State may not
43 be legally domesticated or qualified to do business in this State is
44 immaterial. It also means maintaining in this State, either permanently

1 or temporarily, directly or through a subsidiary, tangible personal
2 property for the purpose of lease or rental. It also means making a mail
3 order sale, as defined in this section, if one of the conditions listed in
4 G.S. 105-164.8(b) is met. It also means the direct shipment of wine to
5 a purchaser in this State by a wine shipper permittee under G.S.
6 18B-1001.1."

7 **SECTION 13.** G.S. 105-164.8(b) reads as rewritten:

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

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

39 **SECTION 14.** G.S. 18B-1104 reads as rewritten:

40 "**§ 18B-1104. Authorization of brewery permit.**

41 The holder of a brewery permit may:

- 42 (1) Manufacture malt beverages;
- 43 (2) Purchase malt, hops and other ingredients used in the manufacture of
44 malt beverages;

- 1 (3) Sell, deliver and ship malt beverages in closed containers to
2 wholesalers licensed under this Chapter as authorized by the ABC
3 laws, except that malt beverages may be sold to exporters and
4 nonresident wholesalers only when the purchase is not for resale in this
5 State;
- 6 (4) Receive malt beverages manufactured by the permittee in some other
7 state for transshipment to dealers in other states;
- 8 (5) Furnish or sell marketable malt beverage products, or packages which
9 do not conform to the manufacturer's marketing standards, if State
10 taxes have been or will be paid, to its employees for the use of the
11 employees or their families and guests in this State;
- 12 (6) Give its products to its employees and guests for consumption on its
13 premises;
- 14 (7) In areas where the sale is legal, sell the brewery's malt beverages at the
15 brewery upon receiving a permit under G.S. 18B-1001(1). The
16 brewery also may obtain a malt beverage wholesaler permit to sell,
17 deliver, and ship at wholesale only malt beverages manufactured by
18 the brewery. The authorization of this subdivision applies to a brewery
19 that sells, to consumers at the brewery, to wholesalers, to retailers, and
20 to exporters, fewer than ~~310,000 gallons~~50,000 barrels of malt
21 beverages produced by it per year.

22 A sale or gift under subdivision (5) or (6) shall not be considered a retail or
23 wholesale sale under the ABC laws."

24 **SECTION 15.** Sections 14 and 15 of this act are effective when it becomes
25 law. The remainder of this act becomes effective October 1, 2003.