

**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**

Short Title: Wine Shippers 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.
6

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.

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

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

22 **"§ 18B-1001.1 Authorization of wine shipper permit.**

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

35 (b) A wine shipper permittee that ships to addresses in the State more than 1,000
36 cases of wine in a calendar year must appoint at least one wholesaler to offer and sell
37 the products of the wine shipper permittee under Article 12 of this Chapter if the wine
38 shipper permittee is contacted by a wholesaler that wishes to sell the products of the
39 wine shipper permittee. This provision shall not be construed to require the wine shipper
40 permittee to appoint the wholesaler that originally contacted the wine shipper permittee.
41 Wine purchased by a resident of the State at the premises of the wine shipper permittee
42 and shipped to an address in the State under G.S. 18B-109(b) shall not be included in
43 calculating the total of 1,000 cases per year.

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

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

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

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

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

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

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

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

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

28 **"§ 18B-1001.2. Additional wine shipping requirements.**

29 (a) A wine shipper permittee shall:

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

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

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

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

39 **"§ 18B-109. Direct shipment of alcoholic beverages into State.**

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

43 (b) Armed Forces Installation. – No person shall have malt beverages or
44 unfortified wine shipped directly from a point outside this State to an armed forces

1 installation within this State if those alcoholic beverages are for resale on the
2 installation.

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

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

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

14 **"§ 18B-1001. Kinds of ABC permits; places eligible.**

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

17 ...

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

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

37 (4) Off-Premises Unfortified Wine Permit. – An off-premises unfortified
38 wine permit authorizes the retail sale of unfortified wine in the
39 manufacturer's original container for consumption off the premises and
40 it authorizes the holder of the permit to ship unfortified wine in closed
41 containers to individual purchasers inside and outside the State. The
42 permit may be issued for retail businesses. The permit may also be
43 issued for a winery for sale of its own unfortified wine. Orders
44 received by a winery by telephone, Internet, mail, facsimile, or other

1 off-premises means of communication shall be shipped pursuant to a
2 wine shipper permit and not pursuant to this subdivision.

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

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

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

30 ..."

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

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

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

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

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

42 read:

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

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

2 "**§ 105-113.73. Misdemeanor.**

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

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

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

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

21 "**§ 105-113.84. Report of resident brewery, resident winery, ~~or nonresident~~**
22 **vendor, vendor, or wine shipper permittee.**

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

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

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

1 order sale, as defined in this section, if one of the conditions listed in
2 G.S. 105-164.8(b) is met. It also means the direct shipment of wine to
3 a purchaser in this State by a wine shipper permittee under G.S.
4 18B-1001.1."

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

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

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

37 **SECTION 14.** This act becomes effective October 1, 2003.