NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 668 (Second Edition)

SHORT TITLE: Wine Shippers Permits

SPONSOR(S): Senator Metcalf

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08
REVENUES					
General Fund					
Wine Shipper Permit		One –Time Revenue Gain - No Estimate Available			
Wine Excise Tax		Revenue Gain - No Estimate Available			
Sales Tax		Revenue Gain - No Estimate Available			
Local Governments					
Wine Excise Tax		Revenue Gain - No Estimate Available			
Sales Tax		Revenue Gain - No Estimate Available			
EXPENDITURES					
General Fund					
Dept. of Revenue	$75,000				
ABC		See Assumptions and Methodology			
AOC/DOC		No Estimate Available			
POSITIONS:					
ABC		See Assumptions and Methodology			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue; Alcoholic Beverage Control Commission; Department of Crime Control & Public Safety: Administrative Office of the Courts (AOC); Department of Correction (DOC)

EFFECTIVE DATE: This act becomes effective October 1, 2003.

BILL SUMMARY: This bill establishes a method for out-of-state wineries to ship wine directly to consumers in North Carolina. Under this bill, any winery that holds a federal basic wine manufacturing permit would be able to apply for a wine shipper's permit for a one-time fee of $100.00. A wine shipper permittee would be allowed to ship up to two cases of wine per month to any person in North Carolina to whom alcoholic beverages may be sold. If the wine shipper permittee ships more than 1,000 cases of wine to addresses in the State during a calendar year, the permittee is required to appoint a wholesaler in the State to sell its products. A wine shipper permit is not required if a customer buys wine on the premises of the winery and ships it to their home address. The bill amends G.S. 105-113.73 to make it a Class 1 misdemeanor to violate a provision of Article 2C (Alcoholic Beverage License) of Chapter 105 (Taxation).

BACKGROUND: In 1981, the General Assembly allowed North Carolina wineries to sell and ship wine directly to North Carolina consumers. For out of state wineries, only North Carolina licensed retailers may sell their products to consumers. In 2002, a federal district court found this disparate treatment of wineries violated the Commerce Clause of the United States Constitution because it favored in-state economic interests over out-of-state interests. That federal court ordered the State not to enforce the ban on out-of-state shipments and to collect the excise tax due on the wine shipped from out of state. North Carolina appealed this decision to the federal Court of Appeals. The Court of Appeals upheld the finding that the exemption violates the Commerce Clause, but allowed the General Assembly to fashion an appropriate remedy. The General Assembly has the option of repealing the exemption for in-state wineries or allowing shipments from out-of-state wineries on the same basis as for in-state wineries.

ASSUMPTIONS AND METHODOLOGY:

General Fund Revenue

No estimate can be made on the amount of General Fund revenue the state will receive from the $100 permit in section 1 of this bill. There are 2,286 bonded wineries according to the May 2000 issue of *The Alcohol and Tobacco Newsletter* (published by the U.S. Department of Treasury's former Bureau of Alcohol, Tobacco and Firearms). WineAmerica has a list of 3,189 wineries they received from the U.S. Department Treasury's Alcohol and Tobacco Tax and Trade Bureau, but warns that this list might overstate the number of wineries. Based on these sources, there are between 2,000 and 3,000 wineries that could apply for the wine shipper permit in North Carolina. While the potential applicant pool is large, the number of wineries seeking a permit may be small. New Hampshire approved a $228 wine shipment permit on July 1, 1998, and had issued only 189 as of May 23, 2003 (Jim Barbutti, New Hampshire Liquor Commission).

No estimate can be made on the amount of General Fund revenue the state will earn from excise and sales taxes remitted by wineries with a wine shipper permit. The state and local governments should receive a revenue gain from the sales made by wineries that previously did not do business with the state. These wineries will collect the 21cents per liter excise tax on unfortified wine and the 24 cents per liter on fortified wine. Local governments receive 62% of the excise tax on unfortified wine and 22% of the excise tax on fortified wine. The wine shipper permittees will also collect and remit the state and local sales tax on the wine they sell. No estimate can be done on the volume of wine that will be sold directly to North Carolina customers.

Department of Revenue

The Director of the Department of Revenue's Corporate, Excise, & Insurance Tax Division estimates there will be little or no cost in establishing a registration process for out-of-state wineries. However, the Division Director anticipates significant cost will be incurred when adding the nonresident shippers to the excise tax payment system. The Director estimates his Division will need up to $75,000 to implement this change in FY 2003-04. <u>The Department of Revenue would like to be granted the authority to withhold up to $75,000 from excise tax collections to implement the law</u>.

Alcoholic Beverage Control Commission
The Director of the Administration Division of the Alcoholic Beverage Control Commission (ABC) estimates this bill will have both one-time and recurring costs. The one-time cost in FY 2003-04 is $3,200 for 40 hours of computer programming to add the wine shipper permit to the agency's system. The recurring cost is approximately $33,000 for a Program Assistant V position to process the wine shipper permits. This expense is for a grade 61 position hired at the midpoint of the range plus benefits. Another $2,000 in one-time expenditures would be needed to equip the position with a desk, chair, computer and supplies.

<u>Given the uncertainty of the number of wine shipper permits that will be issued, the request for a recurring position does not seem warranted</u>. The Alcoholic Beverage Control Commission should be allowed to spend lapsed salaries or other available funds to hire temporary employees to handle the wine shipper permits.

Alcohol Law Enforcement
An official with the Department of Crime Control and Public Safety has determined that <u>this bill has no direct fiscal impact for its Alcohol Law Enforcement Division (ALE)</u>. Unlike enforcement with a permittee at a physical location, ALE would not know when or where a lawful transaction might take place to ensure compliance with the laws. However, if information about a non-compliant shipper is received, an undercover operation could be run. For example, to investigate the shipment of wine to underage customers, ALE would require a budget for purchases, private Internet accounts, permission to use residences, underage signers to receive goods, and the time of agents involved.

<u>Judicial Branch</u>
The bill amends G.S. 105-113.73 to make a violation of a provision of Article 2C (Alcoholic Beverage License) of Chapter 105 (Taxation) a Class 1 misdemeanor. Current G.S. 105-113.73 makes a violation of a provision of the ABC law a Class 1 misdemeanor. As such, this amendment does not create new offenses but clarifies that the offense under G.S. 105-113.73 applies only to violations of Article 2C of Chapter 105.

<u>The Administrative Office of the Courts (AOC) notes that data is unavailable concerning the number of charges that may result under this bill</u>. For most criminal penalty bills, the AOC provides the General Assembly's Fiscal Research Division with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense. New Class 1 misdemeanor cases could result from violations of the new regulations associated with the wine shippers permit or if common carriers deliver or allow a person under 21 years old to sign for wine deliveries sent by wine shipper permittees. For offenses that are brought to trial as Class 1 misdemeanors, the estimated court cost per trial is $3,144. For Class 1 misdemeanor offenses not brought to trial, and where a guilty plea is entered, AOC estimates the cost per guilty plea at $279.

<u>Department of Correction</u>
The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes and fiscal memos are based on January 2003 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.*

<u>It is not known how many offenders might be sentenced under this bill</u>. Since the proposed bill expands an existing offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. The Sentencing Commission notes that in FY 2001-02, 15.8 percent of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served was 35.2 days. Active sentences between 1-90 days are served in local jails; the DOC reimburses counties for active sentences between 30-90 days at a cost to the state of $18/day. Most Class 1 misdemeanants receive community or intermediate sanctions. In 2001-02, costs for these non-active sentences ranged from $1.83 to $11.47 per offender per day.

SOURCES OF DATA: Department of Revenue**,** Alcoholic Beverage Control Commission, U.S. Department of Treasury; Sentencing and Policy Advisory Commission; Administrative Office of the Courts

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DATE: June 11, 2003

Official
Fiscal Research Division
Publication

Signed Copy Located in the NCGA Principal Clerk's Offices