

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 130
PROPOSED COMMITTEE SUBSTITUTE S130-PCS35154-MA-10

Short Title: Wine Distribution Territories.

(Public)

Sponsors:

Referred to:

February 28, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT A WINE WHOLESALER FROM DISTRIBUTING WINE
3 BEYOND ITS DESIGNATED SALES TERRITORY AND TO AUTHORIZE CERTAIN
4 INTRATERRITORY TRANSFERS OF WINE BETWEEN OFF-PREMISES WINE
5 PERMITTEES UNDER COMMON OWNERSHIP.

6 The General Assembly of North Carolina enacts:

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

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

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

15 "§ 18B-1203. **Primary area of ~~responsibility~~; responsibility; no discrimination.**

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



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

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

7 "(4) Off-Premises Unfortified Wine Permit. – An off-premises unfortified wine
8 permit authorizes the retail sale of unfortified wine in the manufacturer's
9 original container for consumption off the premises and it authorizes the
10 holder of the permit to ship unfortified wine in closed containers to
11 individual purchasers inside and outside the State. The permit may be issued
12 for retail businesses. The permit also authorizes the permittee to transfer
13 unfortified wine, not more than four times per calendar year, to another
14 off-premises unfortified wine permittee that is under common ownership or
15 control as the transferor. Except as authorized by this subdivision, transfers
16 of wine by off-premises unfortified wine permittees, purchases of wine by a
17 retail permittee from another retail permittee for the purpose of resale, and
18 sale of wine by a retail permittee to another retail permittee for the purpose
19 of resale are unlawful. In addition, a particular brand of wine may be
20 transferred only if both the transferor and transferee are located within the
21 territory designated between the winery and the wholesaler on file with the
22 Commission. Prior to or contemporaneous with any such transfer, the
23 transferor shall notify each wholesaler who distributes the transferred
24 product of the transfer. The notice shall be in writing or verifiable electronic
25 format and shall identify the transferor and transferee, the date of the
26 transfer, quantity, and items transferred. The permit may also be issued to
27 the holder of a viticulture/enology course authorization under
28 G.S. 18B-1114.4. A school obtaining a permit under this subdivision is
29 authorized to sell wines manufactured during its viticulture/enology program
30 at one non-campus location in a county where the permittee holds and offers
31 classes on a regular full-time basis in a facility owned by the permittee. The
32 permit may also be issued for a winery or a wine producer for sale of its own
33 unfortified wine during hours when the winery or wine producer's premises
34 is open to the public, subject to any local ordinance adopted pursuant to
35 G.S. 18B-1004(d) concerning hours for the retail sale of unfortified wine. A
36 winery obtaining a permit under this subdivision is authorized to sell wine
37 manufactured by the winery at one additional location in the county under
38 the same conditions specified in G.S. 18B-1101(5) for the sale of wine at the
39 winery; provided, however, that no other alcohol sales shall be authorized at
40 the additional location. Orders received by a winery by telephone, Internet,
41 mail, facsimile, or other off-premises means of communication shall be
42 shipped pursuant to a wine shipper permit and not pursuant to this
43 subdivision."

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

45 "(6) Off-Premises Fortified Wine Permit. – An off-premises fortified wine permit
46 authorizes the retail sale of fortified wine in the manufacturer's original
47 container for consumption off the premises and it authorizes the holder of
48 the permit to ship fortified wine in closed containers to individual purchasers
49 inside and outside the State. The permit may be issued for food businesses.
50 The permit may also be issued for a winery for sale of its own fortified wine.
51 Orders received by a winery by telephone, Internet, mail, facsimile, or other

1 off-premises means of communication shall be shipped pursuant to a wine
2 shipper permit and not pursuant to this subdivision. The permit also
3 authorizes the permittee to transfer fortified wine, not more than four times
4 per calendar year, to another off-premises fortified wine permittee that is
5 under common ownership or control as the transferor. Except as authorized
6 by this subdivision, transfers of wine by off-premises fortified wine
7 permittees, purchases of wine by a retail permittee from another retail
8 permittee for the purpose of resale, and sale of wine by a retail permittee to
9 another retail permittee for the purpose of resale are unlawful. In addition, a
10 particular brand of wine may be transferred only if both the transferor and
11 transferee are located within the territory designated between the winery and
12 the wholesaler on file with the Commission. Prior to or contemporaneous
13 with any such transfer, the transferor shall notify each wholesaler who
14 distributes the transferred product of the transfer. The notice shall be in
15 writing or verifiable electronic format and shall identify the transferor and
16 transferee, the date of the transfer, quantity, and items transferred."

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

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