

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 85
SENATE BILL 144

AN ACT TO PROMOTE FAIR COMMERCIAL PRACTICES IN THE WHOLESALE
WINE INDUSTRY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1106, 18B-1107, and 18B-1110 are each amended by designating the present language as subsection "(a) Authorization." and adding a new subsection to read:

"(b) Distribution Agreements. Wine distribution agreements are governed by Article 12 of this Chapter."

Sec. 2. Chapter 18B of the General Statutes is amended by adding a new Article to read:

"ARTICLE 12.

"Wine Distribution Agreements.

"§ 18B-1200. **Construction; findings and purpose.**—(a) This Article shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of the Article are:

- (1) To promote the compelling interest of the public in fair business relations between wine wholesalers and wineries, and in the continuation of wine wholesaleships on a fair basis;
- (2) To protect wine wholesalers against unfair treatment by wineries;
- (3) To provide wine wholesalers with rights and remedies in addition to those existing by contract or common law; and
- (4) To govern all wine wholesaleships, including any renewals or amendments, to the full extent consistent with the Constitution of this State and the United States.

(c) The effect of this Article may not be waived or varied by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to the extent of that waiver or variance.

"§ 18B-1201. **Definitions.**—As used in this Article, unless the context requires otherwise:

(1) 'Agreement' means a commercial relationship between a wine wholesaler and a winery. The agreement may be of a definite or indefinite duration and is not required to be in writing. Any of the following constitutes prima facie evidence of an 'agreement' within the meaning of this definition:

- a. A relationship whereby the wine wholesaler is granted the right to offer and sell a brand offered by a winery;

- b. A relationship whereby the wine wholesaler, as an independent business, constitutes a component of a winery's distribution system;
- c. A relationship whereby the wine wholesaler's business is substantially associated with a brand offered by a winery;
- d. A relationship whereby the wine wholesaler's business is substantially reliant on a winery for the continued supply of wine;
- e. The shipment, preparation for shipment, or acceptance of any order by any winery or its agent for any wine or beverages to a wine wholesaler within this State;
- f. The payment by a wine wholesaler and the acceptance of payment by any winery or its agent for the shipment of any order of wine or beverages intended for sale within this State.

(2) 'Wine wholesaler' means any holder of a wine wholesaler permit, wine importer permit, or bottler permit issued under the authority of this Chapter.

(3) 'Winery' means any holder of an unfortified winery permit, fortified winery permit, limited winery permit, or nonresident wine vendor permit issued under the authority of this Chapter who sells at least 1,000 cases of wine in North Carolina per year.

(4) '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.

"§ 18B-1202. No inducement, coercion, or discrimination.—No winery may:

(1) Induce, coerce, or attempt to induce or coerce any wine wholesaler to accept delivery of any alcoholic beverage or any other commodity which has not been ordered by the wine wholesaler;

(2) Induce, coerce, or attempt to induce or coerce any wine wholesaler to do any illegal act by any means, including threatening to amend, cancel, terminate, or refuse to renew any agreement existing between a winery and a wine wholesaler;

(3) Require a wine wholesaler to assent to any condition, stipulation, or provision limiting the wholesaler in his privilege to sell a product offered by any other winery;

(4) Unlawfully discriminate on the basis of race, color, creed, sex, religion, or national origin in awarding or maintaining agreements covered by this Article. Wineries who contract with wholesalers in this State shall make reasonable efforts to establish and maintain agreements with wholesalers who are females and members of minority groups.

"§ 18B-1203. Primary area of responsibility.—(a) Each agreement shall designate a 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 the effective date of this Article 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 the

effective date of this Article. Redesignations occurring after the effective date of this Article 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 the effective date of this Article as between the winery and the original wine wholesalers thereto.

(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.

"§ 18B-1204. Cancellation.—Notwithstanding the terms, provisions, or conditions of any agreement, no winery may amend, cancel, terminate, or refuse to continue to renew any agreement, or cause a wholesaler to resign from an agreement, unless good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuation, or resignation. 'Good cause' does not include a change in ownership of a winery. 'Good cause' does include:

- (1) Revocation of the wholesaler's permit or license to do business in this State;
- (2) Bankruptcy or receivership of the wholesaler;
- (3) Assignment for the benefit of creditors or similar disposition of the assets of the wholesaler; or
- (4) Failure of the wholesaler to comply substantially, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the winery, including a substantial failure by a wine wholesaler to:
 - (i) maintain a sales volume of the brands offered by the winery, or
 - (ii) render services comparable in quality, quantity, or volume to the sales volumes maintained and services rendered by other wholesalers of the same brands within the State.

In any determination as to whether a wholesaler has failed to comply substantially, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the winery, consideration shall be given to the relative size, population, geographical location, number of retail outlets, demand for the products applicable to the territory of the wholesaler in question and to comparable territories, and any reasonable sales quota set by the agreement. The burden of proving good cause for amendment, termination, cancellation, nonrenewal, noncontinuation, or resignation is on the winery.

"§ 18B-1205. Notice of intent to terminate.—(a) Except as provided in subsection (c), a winery shall provide a wholesaler at least 90 days prior written notice of any intention to amend, terminate, cancel, or not renew any agreement. The notice, a copy of which shall be mailed at the same time to the Commission, shall state all the reasons for the intended amendment, termination, cancellation, or nonrenewal.

(b) When the reasons relate to conditions that can be rectified by the wholesaler, he has 60 days in which to do so. If the wholesaler rectifies the conditions within the 60-day period, he shall give written notice thereof to the winery and to the Commission. If the wholesaler has rectified the conditions, the proposed amendment, termination, cancellation, or nonrenewal is void, except that when the winery contends that the wholesaler has not completely rectified the conditions, the winery may, within 15 days

after the expiration of the 60-day period, request a hearing before the Commission to determine if the wholesaler has rectified all the conditions.

(c) When the reasons relate to conditions that cannot be rectified by the wholesaler within the 60-day period, the wholesaler may request a hearing before the Commission to determine if the winery has good cause for the amendment, termination, cancellation, or nonrenewal of the agreement. The burden of proving good cause for the amendment, termination, cancellation, or nonrenewal is on the winery.

(d) Upon receiving a written request from the winery or wholesaler for a hearing, the Commission shall, after notice and hearing, determine if the wholesaler has rectified the conditions or if good cause exists for the amendment, termination, cancellation, or nonrenewal of the agreement, as appropriate. In any case in which a petition is made to the Commission for such a determination, the agreement in question shall continue in effect, pending the Commission's decision and any judicial review thereof.

(e) In all proceedings before the Commission, the Commission shall ensure that no agreements covered by this Article result in unlawful discrimination on the basis of race, color, creed, sex, religion, or national origin.

(f) No notice is required and an agreement may be immediately terminated, amended, canceled, or allowed to expire if the reason for the amendment, termination, cancellation, or nonrenewal is:

- (1) The bankruptcy or receivership of the wholesaler;
- (2) An assignment for the benefit of creditors or similar disposition of the assets of the business; or
- (3) Revocation of the wholesaler's permit or license.

"§ 18B-1206. Transfer of business.—(a) No winery may unreasonably withhold or delay consent to any transfer of the wholesaler's business or transfer of the stock or other interest in the wholesaleship whenever the wholesaler to be substituted meets the material and reasonable qualifications and standards required of the winery's wholesalers.

(b) Notwithstanding subsection (a), no winery may withhold consent to, or in any manner retain a right of prior approval of, the transfer of the wholesaler's business to a member or members of the family of the wholesaler. Subsequent to such a transfer, the rights and obligations of the wholesaleship and its owners are in all respects governed by the provisions of this Chapter. As used in this subsection, 'family' means the spouse, parents, siblings, and lineal descendants, including those by adoption, of the wholesaler.

"§ 18B-1207. Judicial remedies.—(a) If a winery violates any provision of this Article, a wholesaler may maintain a suit against the winery. The court may grant injunctive and other appropriate relief, including damages to compensate the wholesaler for the value of the agreement and any good will, to remedy violations of this Article.

(b) Any winery that amends, cancels, terminates, or refuses to renew any wine agreement, or causes a wholesaler to resign from an agreement shall compensate the wine wholesaler for the wine wholesaler's wine inventory. The amount of compensation shall include the F.O.B. costs of the wine inventory and any freight charges incurred by the wine wholesaler in receiving them.

"§ 18B-1208. Price of product.—No winery, whether by means of a term or condition of an agreement or otherwise, may directly or indirectly fix or maintain the prices at which the wholesaler may sell any wine or beverage.

"§ 18B-1209. Retaliatory action prohibited.—No winery may take retaliatory action against a wholesaler who files or manifests an intention to file a complaint alleging that the winery violated a State or federal law or rule. Retaliatory action includes refusal without good cause to continue the agreement or a material reduction in the quality of service or quantity of products available to the wholesaler under the agreement.

"§ 18B-1210. Management.—No winery may require or prohibit any change in management or personnel of any wholesaler unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the winery.

"§ 18B-1211. No discrimination.—No winery may discriminate among its wholesalers in any business dealings, including the price of wine sold to the wholesaler, unless the classification among its wholesalers is based upon reasonable grounds.

"§ 18B-1212. No waiver.—No winery may require any wholesaler to waive compliance with any provision of this Chapter. Nothing in this Chapter, however, may be construed to limit or prohibit good faith settlements of disputes voluntarily entered into between the parties.

"§ 18B-1213. Obligations of purchaser.—The purchaser of a winery is obligated to all the terms and conditions of an agreement in effect on the date of the purchase, except for good cause, which includes,

- (i) revocation of the wholesaler's permit or license to do business in this State,
- (ii) bankruptcy or insolvency of the wholesaler,
- (iii) assignment for the benefit of creditors or similar disposition of the assets of the wholesaler, or
- (iv) failure by the wholesaler to comply substantially, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the winery. As used in this Article, 'purchase' includes the sale of stock, sale of assets, merger, lease, transfer, or consolidation.

"§ 18B-1214. Prohibited practices enumerated.—It is a violation of this Article for any winery, directly or indirectly, to engage in any of the following practices:

- (1) To restrict the sale of any equity or indebtedness or the transfer of any securities of any wholesaler or in any way prevent or attempt to prevent the transfer, sale, or issuance of shares of stock or indebtedness to employees, personnel of the wholesaler, or heirs of the principal owner, as long as basic financial requirements of the winery are complied with and the sale, transfer, or issuance does not have the effect of accomplishing a sale of the wholesaler;
- (2) To impose unreasonable standards of performance upon a wholesaler;
- (3) To prohibit directly or indirectly the right of free association among wholesalers for any lawful purpose.

"§ 18B-1215. Intent of nondiscrimination.—It is the intent of this Article that there shall be no unlawful discrimination based on race, color, creed, sex, religion, or national

origin in any aspect of the awarding or maintaining of agreements covered by this Article.

"§ 18B-1216. Relation of Article to other laws.—Nothing in this Article relieves a winery or wholesaler of any obligation, duty, or prohibition imposed by any other provision of this Chapter or by G.S. 75-1.1 or by any other provision of State law, and the remedies provided in this Article are nonexclusive."

Sec. 3. If any provision of this act is declared invalid or unenforceable, that invalidity or unenforceability does not affect the remaining provisions of this act, and to that end the provisions of this act are severable.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 21st day of March, 1983.