

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-350
HOUSE BILL 1500**

AN ACT TO AMEND THE REQUIREMENTS TO HOLD A WINE-TASTING PERMIT AND PROVIDE FOR THE ISSUANCE OF WINE SHOP PERMITS, TO AMEND LAWS CONCERNING COMMUNITY COLLEGE VITICULTURE/ENOLOGY PROGRAMS, WINE DISTRIBUTION AGREEMENTS AND BEER FRANCHISE AGREEMENTS, AND TO PROVIDE FOR THE BIOMETRIC IDENTIFICATION OF PURCHASERS OF ALCOHOL AND TOBACCO PRODUCTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001(15) reads as rewritten:

"(15) Wine-Tasting Permit. – A wine-tasting permit authorizes wine tastings on ~~the a premises conducted and supervised by the permittee.~~ holding a retail permit, by the retail permit holder or his employee. A wine tasting consists of the offering of a sample of one or more unfortified wine products, in amounts of no more than one ounce for each sample, without charge, to customers of the business. Any person pouring wine at a wine tasting shall be at least 21 years of age.

a. Representatives of the winery, which produced the wine, ~~or the wine producer~~ producer, a wholesaler, or a wholesaler's employee may assist with the tastings in a manner consistent with existing law. tasting. Assisting with a wine tasting includes:

1. Pouring samples for customers.
2. Checking the identification of patrons being served at the wine tasting.

b. When a representative of the winery that produced the wine, the wine producer, a wine wholesaler, or a wine wholesaler's employee assists in a wine tasting conducted by a retail permit holder:

1. The retail permit holder shall designate an employee to actively supervise the wine tasting.
2. A retail permit holder's employee shall not supervise more than three wine-tasting areas.
3. No more than six wines may be tasted at any one tasting area.

4. The wine tasting shall not last longer than four hours from the time designated as the starting time by the retail permit holder.

c. The retail permit holder shall be solely liable for any violations of this Chapter occurring in connection with the wine tasting. The Commission shall adopt rules to assure that the tastings are limited to samplings and not a subterfuge for the unlawful sale or distribution of wine, and that the tastings are not used by industry members for unlawful inducements to retail permit holders, and do not violate existing rules. Except for purposes of this subsection, the holder of a wine-tasting permit shall not be construed to hold a permit for the on-premises sale or consumption of alcoholic beverages. Any food business is eligible for a wine-tasting permit."

SECTION 2.(a) G.S. 18B-1001 is amended by adding a new subdivision to

read:

"(16) Wine Shop Permit. – A wine shop permit authorizes the retail sale of malt beverages, unfortified wine, and fortified wine in the manufacturer's original container for consumption off the premises, and authorizes wine tastings on the premises conducted and supervised by the permittee in accordance with subdivision (15) of this section. It also authorizes the holder of the permit to ship malt beverages, unfortified wine, and fortified wine in closed containers to individual purchasers inside and outside the State. The permit may be issued for retail businesses whose primary purpose is selling malt beverages and wine for consumption off the premises and regularly and customarily educating consumers through tastings, classes, and seminars about the selection, serving, and storing of wine. The holder of the permit is authorized to sell unfortified wine for consumption on the premises, provided that the sale of wine for consumption on the premises does not exceed forty percent (40%) of the establishment's total sales for any 30-day period. The sale of wine for consumption on the premises shall be limited to those amounts that remain in opened bottles upon the conclusion of an authorized wine tasting, and individual servings shall not exceed four ounces per glass."

SECTION 2.(b) G.S. 18B-902(d) reads as rewritten:

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

- (1) On-premises malt beverage permit – \$400.00.
- (2) Off-premises malt beverage permit – \$400.00.
- (3) On-premises unfortified wine permit – \$400.00.
- (4) Off-premises unfortified wine permit – \$400.00.
- (5) On-premises fortified wine permit – \$400.00.
- (6) Off-premises fortified wine permit – \$400.00.

- (7) Brown-bagging permit – \$400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be \$200.00.
- (8) Special occasion permit – \$400.00.
- (9) Limited special occasion permit – \$50.00.
- (10) Mixed beverages permit – \$1,000.
- (11) Culinary permit – \$200.00.
- (12) Unfortified winery permit – \$300.00.
- (13) Fortified winery permit – \$300.00.
- (14) Limited winery permit – \$300.00.
- (15) Brewery permit – \$300.00.
- (16) Distillery permit – \$300.00.
- (17) Fuel alcohol permit – \$100.00.
- (18) Wine importer permit – \$300.00.
- (19) Wine wholesaler permit – \$300.00.
- (20) Malt beverage importer permit – \$300.00.
- (21) Malt beverage wholesaler permit – \$300.00.
- (22) Bottler permit – \$300.00.
- (23) Salesman permit – \$100.00.
- (24) Vendor representative permit – \$50.00.
- (25) Nonresident malt beverage vendor permit – \$100.00.
- (26) Nonresident wine vendor permit – \$100.00.
- (27) Any special one-time permit under G.S. 18B-1002 – \$50.00.
- (28) Winery special event permit – \$200.00.
- (29) Mixed beverages catering permit – \$200.00.
- (30) Guest room cabinet permit – \$1,000.
- (31) Liquor importer/bottler permit – \$500.00.
- (32) Cider and vinegar manufacturer permit – \$200.00.
- (33) Brew on premises permit – \$400.00.
- (34) Wine producer permit – \$300.00.
- (35) Wine tasting permit – \$100.00.
- (36) Wine shipper permit – \$100.00.
- (37) Wine shop permit – \$100.00."

SECTION 2.(c) G.S. 18B-903(b) reads as rewritten:

"(b) Renewal. – Application for renewal of an ABC permit shall be on a form provided by the Commission. An application for renewal shall be accompanied by an application fee of twenty-five percent (25%) of the original application fee set in G.S. 18B-902, except that the renewal application fee for each wine shop permit shall be five hundred dollars (\$500.00), and the renewal application fee for each mixed beverages permit and each guest room cabinet permit shall be seven hundred fifty dollars (\$750.00). A renewal fee shall not be refundable."

SECTION 3.(a) G.S. 18B-1114.4 reads as rewritten:

"§ 18B-1114.4. Viticulture/Enology course authorization.

(a) Authorization. – The holder of a viticulture/enology course authorization may:

- (1) Manufacture wine from grapes grown on the school's campus or the school's contracted or leased property for the purpose of providing instruction and education on the making of unfortified wines.
- (2) Possess wines manufactured during the viticulture/enology program for the purpose of conducting wine-tasting seminars and classes for students who are 21 years of age or older.
- (3) Sell wines produced during the course to wholesalers or to retailers upon obtaining a wine wholesaler permit under G.S. 18B-1107, except that the permittee may not receive shipments of wines from other producers.

(b) Limitation. – Authorization for a viticulture/enology course shall be granted by the Commission only for a community college or college that offers a viticulture/enology program as a part of its curriculum offerings for students of the school. ~~No retail sales of wine shall be made by the students, instructor, or school.~~ Wines may be manufactured only from grapes grown in a viticulture/enology course ~~vineyard, not to exceed five acres,~~ vineyard that is located on the school's campus or the school's contracted or leased property.

(c) The holder of a viticulture/enology course authorization who obtains a wine wholesaler permit under G.S. 18B-1107 subject to the limitation in subsection (a) of this section may manufacture wines from grapes grown by others until June 30, 2004. Otherwise, wine may be manufactured only as provided in subsection (b) of this section. obtain a winery special event permit under G.S. 18B-1114.1, and where the permit is valid may participate in approved events and sell at retail at those events any wine produced incident to the operation of the viticulture/enology program. The holder of a viticulture/enology course authorization may participate in not more than six winery special events within a 12-month period and may sell up to 25 cases of wine at each event. Net proceeds from the program's retail sale of wine pursuant to this subsection shall be retained by the school and used for support of the viticulture/enology program.

(d) The holder of a viticulture/enology course authorization shall not be considered a winery for the purposes of this Chapter or Chapter 105 of the General Statutes."

SECTION 3.(b) G.S. 18B-1114.1(a) reads as rewritten:

"(a) Authorization. – The holder of an unfortified winery permit, a limited winery permit, a viticulture/enology course authorization, or a wine producer permit may obtain a winery special permit allowing the winery or wine producer to give free tastings of its wine, and to sell its wine by the glass or in closed containers, at trade shows, conventions, shopping malls, wine festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission."

SECTION 4. G.S. 18B-1200 reads as rewritten:

"§ 18B-1200. Construction; findings and ~~purpose.~~ purpose; exceptions.

(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 wholesalerships 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 wholesalerships, 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.

(d) A North Carolina winery holding a valid wine wholesaler permit issued pursuant to G.S. 18B-1101(7) and G.S. 18B-1107, when acting as its own master wholesaler, shall not be subject to the provisions of G.S. 18B-1204, 18B-1205, and 18B-1207."

SECTION 5. G.S. 18B-1302(b) reads as rewritten:

"(b) Existence of Agreement. – A franchise agreement as described in subsection (a) exists when:

- (1) The supplier has shipped malt beverages to a wholesaler or accepted an order for malt beverages from the wholesaler;
- (2) A wholesaler has paid or the supplier has accepted payment for an order of malt beverages intended for sale within this State;
- (3) The supplier and wholesaler have filed with the Commission a distribution agreement as required by G.S. 18B-1303; or
- (4) A supplier ~~purchases~~ acquires the right to manufacture a malt beverage product, or the trade name for such product, or the right to distribute a product, ~~from another supplier with whom the~~ for which a wholesaler has a franchise agreement."

SECTION 6.(a) G.S. 18B-302(d) is amended by adding a new subdivision to read:

"(3) Shows that at the time of purchase, the purchaser utilized a biometric identification system that demonstrated (i) the purchaser's age to be at least the required age for the purchase and (ii) the purchaser had previously registered with the seller or seller's agent a drivers license, a special identification card issued under G.S. 20-377.7, a military identification card, or a passport showing the purchaser's date of birth and bearing a physical description of the person named on the document."

SECTION 6.(b) G.S. 14-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. – If any person shall distribute, or aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall purchase tobacco products or cigarette wrapping papers on behalf of a person, less than

18 years, the person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eighths of an inch high which states the following:

**N.C. LAW STRICTLY PROHIBITS
THE PURCHASE OF TOBACCO PRODUCTS
BY PERSONS UNDER THE AGE OF 18.**

PROOF OF AGE REQUIRED.

Failure to post the required sign shall be an infraction punishable by a fine of twenty-five dollars (\$25.00) for the first offense and seventy-five dollars (\$75.00) for each succeeding offense.

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor if in fact the prospective purchaser is under 18 years of age. ~~Proof that the defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer, or that the defendant relied on the electronic system established and operated by the Division of Motor Vehicles pursuant to G.S. 20-37.02, shall be a defense to any action brought under this subsection.~~ Retail distributors of tobacco products shall train their sales employees in the requirements of this law. Proof of any of the following shall be a defense to any action brought under this subsection:

- (1) The defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer.
- (2) The defendant relied on the electronic system established and operated by the Division of Motor Vehicles pursuant to G.S. 20-37.02.
- (3) The defendant relied on a biometric identification system that demonstrated (i) the purchaser's age to be at least the required age for the purchase and (ii) the purchaser had previously registered with the seller or seller's agent a drivers license, a special identification card issued under G.S. 20-377.7, a military identification card, or a passport showing the purchaser's date of birth and bearing a physical description of the person named on the card."

SECTION 7. This act is effective when it becomes law. Section 4 of this act shall be effective prospectively only and shall not apply to pending litigation or claims that accrued before the effective date of this act.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 1:30 p.m. this 7th day of September, 2005