

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2006-227
HOUSE BILL 1025**

AN ACT TO MAKE VARIOUS CHANGES TO THE ALCOHOL BEVERAGE
CONTROL LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(17) Winemaking on Premises Permit. – A permit may be issued to a business, located in a jurisdiction where the sale of unfortified wine is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use in amounts set forth in 27 C.F.R. § 24.75. Except for wine produced for testing equipment or recipes and samples pursuant to this subdivision, the permit holder shall not engage in the actual production or manufacture of wine. Samples may be consumed on the premises only by a person who has a nonrefundable contract to ferment at the premises, and the samples may not exceed one ounce per sample. All wine produced at a winemaking on premises facility shall be removed from the premises by the customer and may only be used for home consumption and the personal use of the customer."

SECTION 2. G.S. 18B-307 reads as rewritten:

"§ 18B-307. Manufacturing offenses.

(a) Offenses. – It shall be unlawful for any person, except as authorized by this Chapter, to:

- (1) Sell or possess equipment or ingredients intended for use in the manufacture of any alcoholic beverage, except equipment and ingredients provided under a Brew on Premises permit or a Winemaking on Premises permit; or
- (2) Knowingly allow real or personal property owned or possessed by him to be used by another person for the manufacture of any alcoholic beverage, except pursuant to a Brew on Premises permit or a Winemaking on Premises permit.

(b) Unlawful Manufacturing. – Except as provided in G.S. 18B-306, it shall be unlawful for any person to manufacture any alcoholic beverage, except at an establishment with a Brew on Premises permit or a Winemaking on Premises permit, without first obtaining the applicable ABC permit and revenue licenses.

(c) Second Offense of Manufacturing. – A second offense of unlawful manufacturing of alcoholic beverage shall be a Class I felony."

SECTION 3. G.S. 18B-902(d) is amended by adding two new subdivisions to read:

"(38) Winemaking on Premises permit – \$400.00.

(39) Wine shipper packager permit – \$100.00."

SECTION 4. G.S. 18B-1001.1(c) reads as rewritten:

"(c) A wine shipper permittee may contract with the holder of a wine shipper packager permit for the packaging and shipment of wine pursuant to this section. The direct shipment of wine by wine shipper or wine shipper packager permittees made pursuant to this section shall be made by approved common carrier only. Each common carrier shall apply to the Commission for approval to provide common carriage of wines shipped by holders of permits issued pursuant to this section.

Each common carrier making deliveries pursuant to this section shall:

- (1) Require the recipient, upon delivery, to demonstrate that the recipient is at least 21 years of age by providing a form of identification specified in G.S. 18B-302(d)(1).
- (2) Require the recipient to sign an electronic or paper form or other acknowledgment of receipt as approved by the Commission.
- (3) Refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identification as required by subdivision (1) of this subsection.
- (4) Submit any other information that the Commission shall require.

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

SECTION 5. G.S. 18B-1001.2 reads as rewritten:

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

(a) A wine shipper permittee shall:

- (1) Compile and submit to the Commission quarterly a summary indicating all wine products shipped, including brand and price of each product, date of each shipment, quantity of each shipment, and amount of excise and sales tax remitted to the Department of Revenue. The report shall include all wine products shipped on the permittee's behalf under contract with a wine shipper packager.
- (2) Register with the Department of Revenue as a wine shipper permittee and provide any additional information required by the Department.

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

SECTION 6. Article 10 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"§ 18B-1001.3. Authorization of wine shipper packager permit.

The holder of a wine shipper packager permit may provide services for the warehousing, packaging, and shipment of wine on behalf of a winery holding a wine shipper permit. A wine shipper packager permit authorizes the holder to receive, in closed containers, wine produced by and belonging to a wine shipper permittee and to place the unopened wine in containers or packaging materials as a service to the wine shipper permittee in connection with the marketing and sale of its wine products. A wine shipper packager may package and return wine products to the wine shipper permittee or, on behalf of the wine shipper permittee, may package and ship wine products in closed containers to individual purchasers inside and outside this State in accordance with the provisions of G.S. 18B-1001.1. The permit may be issued to a USDA-approved company specializing in warehousing and contract packaging."

SECTION 7. G.S. 18B-1006(a) reads as rewritten:

"(a) School and College Campuses. – No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college, other than at a regional facility as defined by G.S. 160A-480.2 operated by a facility authority under Part 4 of Article 20 of Chapter 160A of the General Statutes except for a public school or college function, unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit. This subsection shall not apply on property owned by a local board of education which was leased for 99 years or more to a nonprofit auditorium authority created prior to 1991 whose governing board is appointed by a city board of aldermen, a county board of commissioners, or a local school board. This subsection shall also not apply to the constituent institutions of The University of North Carolina with respect to the sale of beer and wine at performing arts centers located on property owned or leased by the institutions if the seating capacity does not exceed 2,000 ~~seats~~seats, or to any golf courses owned or leased by the institutions and open to the public for use."

SECTION 8. G.S. 18B-108 reads as rewritten:

"§ 18B-108. Sales on trains.

Alcoholic beverages may be sold on railroad trains in this State upon compliance with Article 2C of Chapter 105 of the General Statutes. Malt beverages, unfortified wine, and fortified wine may be sold and delivered by any wholesaler or retailer licensed in this State to an officer or agent of a rail line that carries at least 60,000 passengers annually."

SECTION 9. G.S. 18B-1001(16) reads as rewritten:

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

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

...

- (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. The holder of a wine-tasting permit not engaged in the preparation or sale of food on the premises is not subject to Part 6 of Article 8 of Chapter 130A of the General Statutes."

SECTION 10. G.S. 18B-203(a) reads as rewritten:

"(a) Powers. – The Commission shall have authority to:

...

(19) Recognize the holder of a wine importer permit or nonresident wine vendor permit as a primary American source of supply for the wine of a winery. To be considered a primary American source of supply, a wine importer must establish that it has lawfully purchased the wine from the winery, or from an agent of the winery, and by written contract or otherwise has been authorized by the winery to distribute the wine to wholesalers in the United States."

SECTION 11. G.S. 18B-1106 reads as rewritten:

"§ 18B-1106. Authorization of wine importer permit.

(a) Authorization. – The holder of a wine importer permit may:

- (1) Import fortified and unfortified wines from outside the United States in closed containers;
- (2) Store those wines;
- (3) Sell those wines to wine wholesalers for purposes of resale.

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

(c) The holder of a wine importer permit may import and sell to wholesalers only wine for which it is a primary American source of supply. To be considered a primary American source of supply, a wine importer must establish that it has lawfully purchased the wine from the winery, or from an agent of the winery, and by written

contract or otherwise has been authorized by the winery to distribute the wine to wholesalers in the United States."

SECTION 12. G.S. 18B-1107 reads as rewritten:

"§ 18B-1107. Authorization of wine wholesaler permit.

(a) Authorization. – The holder of a wine wholesaler permit may:

- (1) Receive, possess and transport shipments of fortified and unfortified ~~wine;~~wine. The wine must be received from one of the following:
 - a. A primary American source of supply for that wine as recognized by the Commission or as verified by the wholesaler.
 - b. A licensed North Carolina wholesaler who received the wine from a primary American source of supply and with whom the second wholesaler has a subcontracting agreement for distribution of the wine.
 - c. Another wholesaler from whom the purchasing wholesaler is purchasing the wholesaler's business or from whom the wholesaler is purchasing the brand or distribution rights for the wine being received.
 - d. Another wholesaler who also has distribution rights for the wine being received and from whom the wholesaler is acquiring the wine in order to address a temporary inventory shortage.
- (2) Sell, deliver and ship wine in closed containers for purposes of resale to wholesalers or retailers licensed under this Chapter as authorized by the ABC ~~laws;~~laws.
- (3) Furnish and sell wine to its employees, subject to the rules of the Commission and the Department of ~~Revenue;~~Revenue.
- (4) In locations where the sale is legal, furnish wine to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to rules of the ~~Commission;~~Commission.
- (5) Sell out-of-date unfortified and fortified wines to holders of cider and vinegar manufacturer permits, provided that each bottle is marked "out-of-date" by the wholesaler.

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

SECTION 13. G.S. 18B-1114 reads as rewritten:

"§ 18B-1114. Authorization of nonresident wine vendor permit.

The holder of a nonresident wine vendor permit may sell, deliver, and ship unfortified and fortified wine in this State only to wholesalers, importers, and bottlers licensed under this Chapter, as authorized by the ABC laws. The unfortified and fortified wine must come to rest at the licensed premises of a wine wholesaler in this State before being resold to a retailer. A nonresident wine vendor permit may be issued to a winery, a wholesaler, an importer, or a bottler outside North Carolina who desires to sell, deliver, and ship unfortified and fortified wine into this State. The holder of a nonresident wine vendor permit may sell, deliver, and ship into this State only wine for which it is a primary American source of supply. To be considered a primary American

source of supply, a nonresident wine vendor must establish that it has lawfully purchased the wine from the winery, or from an agent of the winery, and by written contract or otherwise has been authorized by the winery to distribute the wine to wholesalers in the United States."

SECTION 14. Effective July 1, 2007, G.S. 105-113.81A reads as rewritten:
"§ 105-113.81A. Distribution of part of wine taxes attributable to North Carolina wine.

The Secretary shall on a quarterly basis credit to the Department of Commerce two hundred thousand dollars (\$200,000) from the net proceeds of the excise tax collected on unfortified wine bottled in North Carolina during the previous quarter and the net proceeds of the excise tax collected on fortified wine bottled in North Carolina during the previous quarter, except that the amount credited to the Department of Commerce under this section shall not exceed five hundred thousand dollars (\$500,000) per fiscal year. wine. The Department of Commerce shall allocate the funds received under this section to the North Carolina Wine and Grape Growers Council to be used to promote the North Carolina grape and wine industry and to contract for research and development services to improve viticultural and enological practices in North Carolina. Any funds credited to the Department of Commerce under this section that are not expended by June 30 of any fiscal year may do not revert to the General Fund, but ~~shall~~ remain available to the Department for the uses set forth in this section."

SECTION 15. Except as otherwise provided herein, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 2006.

s/ Beverly E. Perdue
President of the Senate

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

s/ Michael F. Easley
Governor

Approved 3:41 p.m. this 10th day of August, 2006