

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2003**

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**HOUSE BILL 1108**  
**Committee Substitute Favorable 6/9/03**

Short Title: Wine Shippers Permits.

(Public)

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Sponsors:

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Referred to:

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April 10, 2003

A BILL TO BE ENTITLED

1  
2 AN ACT TO AUTHORIZE THE ALCOHOLIC BEVERAGE COMMISSION TO  
3 ISSUE WINE SHIPPERS PERMITS TO ALLOW THE DIRECT SHIPMENT OF  
4 WINES TO RESIDENTS OF NORTH CAROLINA.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 18B-902(d) reads as rewritten:

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

- 9 (1) On-premises malt beverage permit – \$400.00.
- 10 (2) Off-premises malt beverage permit – \$400.00.
- 11 (3) On-premises unfortified wine permit – \$400.00.
- 12 (4) Off-premises unfortified wine permit – \$400.00.
- 13 (5) On-premises fortified wine permit – \$400.00.
- 14 (6) Off-premises fortified wine permit – \$400.00.
- 15 (7) Brown-bagging permit – \$400.00, unless the application is for a  
16 restaurant seating less than 50, in which case the fee shall be \$200.00.
- 17 (8) Special occasion permit – \$400.00.
- 18 (9) Limited special occasion permit – \$50.00.
- 19 (10) Mixed beverages permit – \$1,000.
- 20 (11) Culinary permit – \$200.00.
- 21 (12) Unfortified winery permit – \$300.00.
- 22 (13) Fortified winery permit – \$300.00.
- 23 (14) Limited winery permit – \$300.00.
- 24 (15) Brewery permit – \$300.00.
- 25 (16) Distillery permit – \$300.00.
- 26 (17) Fuel alcohol permit – \$100.00.
- 27 (18) Wine importer permit – \$300.00.
- 28 (19) Wine wholesaler permit – \$300.00.
- 29 (20) Malt beverage importer permit – \$300.00.

- 1 (21) Malt beverage wholesaler permit – \$300.00.
- 2 (22) Bottler permit – \$300.00.
- 3 (23) Salesman permit – \$100.00.
- 4 (24) Vendor representative permit – \$50.00.
- 5 (25) Nonresident malt beverage vendor permit – \$100.00.
- 6 (26) Nonresident wine vendor permit – \$100.00.
- 7 (27) Any special one-time permit under G.S. 18B-1002 – \$50.00.
- 8 (28) Winery special event permit – \$200.00.
- 9 (29) Mixed beverages catering permit – \$200.00.
- 10 (30) Guest room cabinet permit – \$1,000.
- 11 (31) Liquor importer/bottler permit – \$500.00.
- 12 (32) Cider and vinegar manufacturer permit – \$200.00.
- 13 (33) Brew on premises permit – \$400.00.
- 14 (34) Wine producer permit – \$300.00.
- 15 (35) Wine tasting permit – \$100.00.
- 16 (36) Wine shipper permit – \$100.00.

17 **SECTION 2.** G.S. 18B-1100 reads as rewritten:

18 **"§ 18B-1100. Commercial permits.**

19 The Commission may issue the following commercial permits:

- 20 (1) Unfortified winery
- 21 (2) Fortified winery
- 22 (3) Limited winery
- 23 (4) Brewery
- 24 (5) Distillery
- 25 (6) Fuel alcohol
- 26 (7) Wine importer
- 27 (8) Wine wholesaler
- 28 (9) Malt beverages importer
- 29 (10) Malt beverages wholesaler
- 30 (11) Bottler
- 31 (12) Salesman
- 32 (13) Vendor representative
- 33 (14) Nonresident malt beverage vendor
- 34 (15) Nonresident wine vendor
- 35 (16) Winery special show
- 36 (17) Liquor importer/bottler permit
- 37 (18) Cider and vinegar manufacturer
- 38 (19) Wine producer permit
- 39 (20) Wine shipper permit.

40 **SECTION 3.** Chapter 18B of the General Statutes is amended by adding a  
41 new section to read:

42 **"§ 18B-1001.1. Authorization of wine shipper permit.**

- 43 (a) Any winery located within or outside the State, holding a federal basic wine  
44 manufacturer permit, may apply to the Commission for issuance of a wine shipper

1 permit that shall authorize the shipment of brands of wines identified in the application.  
2 A wine shipper permittee may amend the brands of wines identified in the permit  
3 application but shall file any amendments with the Commission. Any winery that  
4 applies for a wine shipper permit shall notify any wholesale permittees that have been  
5 authorized to distribute those brands within this State that an application has been filed  
6 for a wine shipper permit. The notice shall be given in writing and in a form prescribed  
7 by the Commission.

8 (b) The holder of a wine shipper permit and the holder of a retail wine permit  
9 shipping directly to consumers pursuant to that permit may sell and ship to any person  
10 in North Carolina to whom alcoholic beverages may be lawfully sold not more than two  
11 cases of wine per month. All sales and shipments shall be for personal use only and not  
12 for resale. A case of wine shall mean any combination of packages containing not more  
13 than nine liters of wine.

14 (c) A wine shipper permittee that ships more than 1,000 cases of wine to North  
15 Carolina addresses in a calendar year shall appoint at least one wholesaler to offer and  
16 sell the products of the wine shipper permittee under Article 12 of this Chapter, if the  
17 wine shipper permittee is contacted by a wholesaler that wishes to sell the products of  
18 the wine shipper permittee. This provision shall not be construed to require the wine  
19 shipper permittee to appoint the wholesaler who originally contacted the wine shipper  
20 permittee. Wine purchased by a North Carolina resident at the premises of the wine  
21 shipper permittee and shipped to an address in North Carolina under subsection (b) of  
22 this section shall not be included in calculating the total of 1,000 cases per year.

23 (d) A wine shipper permittee shall be subject to jurisdiction of the North Carolina  
24 courts by virtue of applying for a wine shipper permit and shall comply with any audit  
25 and other compliance requirements adopted by the Commission and the Department of  
26 Revenue."

27 **SECTION 4.** Chapter 18B of the General Statutes is amended by adding a  
28 new section to read:

29 **"§ 18B-1001.2. Additional wine shipping requirements.**

30 A wine shipper permittee shall:

- 31 (1) Compile and submit to the Commission quarterly, a summary  
32 indicating all wine products shipped, including brand and price of each  
33 product, date of each shipment, and amount of excise and sales tax  
34 remitted to the Department of Revenue.  
35 (2) Register with the Department of Revenue as a wine shipper permittee  
36 and provide any additional information required by the Department."

37 **SECTION 5.** Chapter 18B of the General Statutes is amended by adding a  
38 new section to read:

39 **"§ 18B-1001.3. Wine shipper permit common carrier provisions.**

40 The direct shipment of wine by wine shipper permittees and retail wine permittees  
41 made pursuant to G.S. 18B-1001.1 shall be by approved common carrier only. Each  
42 common carrier shall apply to the Commission for approval to provide common  
43 carriage of wines shipped by holders of permits issued pursuant to this section. These  
44 rules shall include provisions that require:

- 1           (1) Proof, upon delivery, that the recipient of the wine is at least 21 years  
2           of age.
- 3           (2) The recipient to sign an electronic or paper form or other  
4           acknowledgment of receipt as approved by the Commission.
- 5           (3) The Commission-approved common carrier to submit any information  
6           that the Commission may require.

7           The Commission-approved common carrier shall refuse delivery when the proposed  
8           recipient appears to be under the age of 21 years and refuses to present valid  
9           identification. All wine shipper permittees shipping wines pursuant to this section shall  
10          affix a notice in their standard typeface for shipments of alcoholic beverages, but not  
11          less than a 26-point type, to the outside of each package of wine shipped within or into  
12          the state in a conspicuous location stating: 'CONTAINS ALCOHOLIC BEVERAGES;  
13          SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR  
14          DELIVERY'. Any delivery of wines to a minor by a common carrier shall constitute a  
15          violation by the common carrier. The common carrier and the wine shipper permittee  
16          shall be liable only for their independent acts."

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

19          "**§ 18B-1001.4. Wine purchased on winery premises.**

20          A person purchasing wine at the premises of a winery, whether located within or  
21          outside North Carolina, may ship or authorize the winery to ship by common carrier the  
22          purchased wine directly to an address in North Carolina in amounts that can be  
23          personally transported in accordance with the laws of North Carolina and of the state in  
24          which the winery is located."

25           **SECTION 7.** G.S. 18B-102.1(a) reads as rewritten:

26          "(a) It is unlawful for any person who is an out-of-state retail or wholesale dealer  
27          in the business of selling alcoholic beverages who does not hold a wine shipper permit  
28          or a retail wine permittee shipping pursuant to G.S. 18B-1001.1 to ship or cause to be  
29          shipped any alcoholic beverage directly to any North Carolina resident who does not  
30          hold a valid wholesaler's permit under Article 11 of this Chapter."

31           **SECTION 8.** G.S. 18B-109(a) reads as rewritten:

32          "(a) General Prohibition. – ~~No~~ Except as provided in G.S. 18B-1001.4, no person  
33          shall have any alcoholic beverage mailed or shipped to him from outside this State  
34          unless he has the appropriate ABC ~~permit~~ permit or unless the shipper holds a wine  
35          shipper permit."

36           **SECTION 9.** G.S. 18B-1101(3) is repealed.

37           **SECTION 10.** G.S. 18B-1102(3) is repealed.

38           **SECTION 11.** G.S. 105-113.83(b) reads as rewritten:

39          "(b) Beer and Wine. – The excise taxes on malt beverages and wine levied under  
40          G.S. 105-113.80(a) and (b), respectively, are payable to the Secretary by the resident  
41          wholesaler or importer who first handles the beverages in this State. The excise taxes on  
42          wine under G.S. 105-113.80(b) shipped directly to consumers pursuant to G.S.  
43          18B-1001.1 shall be paid by the wine shipper permittee or winery. The taxes on malt  
44          beverages and wine shall be paid only once on the same beverages. The tax shall be

1 paid on or before the 15th day of the month following the month in which the beverage  
2 is first sold or otherwise disposed of in this State by the wholesaler or ~~importer-~~  
3 importer, or wine shipper permittee or winery. When excise taxes are paid on wine or  
4 malt beverages, the wholesaler or ~~importer-importer, or wine shipper permittee or~~  
5 winery shall submit to the Secretary verified reports on forms provided by the Secretary  
6 detailing sales records for the month for which the taxes are paid. The report shall  
7 indicate the amount of excise tax due, contain the information required by the Secretary,  
8 and indicate separately any transactions to which the excise tax does not apply."

9 **SECTION 12.** G.S. 105-113.84 reads as rewritten:

10 "**§ 105-113.84. Report of resident brewery, resident winery, or nonresident**  
11 **vendor.**

12 A resident brewery, resident winery, ~~and nonresident vendor-vendor, and wine~~  
13 shipper permittee must file a monthly report with the Secretary. The report must list the  
14 amount of beverages delivered to North Carolina wholesalers and ~~importers-importers~~  
15 or purchasers under G.S. 18B-1001.1 during the month. The report is due by the 15th  
16 day of the month following the month covered by the report. The report must be filed on  
17 a form approved by the Secretary and must contain the information required by the  
18 Secretary."

19 **SECTION 13.** G.S. 105-113.85 reads as rewritten:

20 "**§ 105-113.85. Discount.**

21 Each wholesaler or ~~importer-importer, or wine shipper permittee or winery~~ who files  
22 a timely return and sends a timely payment may deduct from the amount payable a  
23 discount of four percent (4%). This discount covers losses due to spoilage and breakage,  
24 expenses incurred in preparing the records and reports required by this Article, and the  
25 expense of furnishing a bond."

26 **SECTION 14.** G.S. 105-113.68(a) reads as rewritten:

27 "(a) Definitions. – As used in this Article, unless the context clearly requires  
28 otherwise:

29 ...

30 (15) "Wine shipper permittee" means a winery that holds a wine shipper  
31 permit issued by the Alcoholic Beverage Control Commission  
32 pursuant to G.S. 18B-1001.1."

33 **SECTION 15.** G.S. 105-164.8(b) reads as rewritten:

34 "(b) Mail Order Sales. – A retailer who makes a mail order sale is engaged in  
35 business in this State and is subject to the tax levied under this Article if one of the  
36 following conditions is met:

- 37 (1) The retailer is a corporation engaged in business under the laws of this  
38 State or a person domiciled in, a resident of, or a citizen of, this State;
- 39 (2) The retailer maintains retail establishments or offices in this State,  
40 whether the mail order sales thus subject to taxation by this State result  
41 from or are related in any other way to the activities of such  
42 establishments or offices;
- 43 (3) The retailer has representatives in this State who solicit business or  
44 transact business on behalf of the retailer, whether the mail order sales

1                   thus subject to taxation by this State result from or are related in any  
2                   other way to such solicitation or transaction of business;

3                   (4) Repealed by Session Laws 1991, c. 45, s. 16.

4                   (5) The retailer, by purposefully or systematically exploiting the market  
5                   provided by this State by any media-assisted, media-facilitated, or  
6                   media-solicited means, including direct mail advertising, distribution  
7                   of catalogs, computer-assisted shopping, television, radio or other  
8                   electronic media, telephone solicitation, magazine or newspaper  
9                   advertisements, or other media, creates nexus with this State;

10                  (6) Through compact or reciprocity with another jurisdiction of the United  
11                  States, that jurisdiction uses its taxing power and its jurisdiction over  
12                  the retailer in support of this State's taxing power; or

13                  (7) The retailer consents, expressly or by implication, to the imposition of  
14                  the tax imposed by this Article. For purposes of this subdivision,  
15                  evidence that a retailer engaged in the activity described in subdivision  
16                  (5) shall be prima facie evidence that the retailer consents to the  
17                  imposition of the tax imposed by this Article.

18                  (8) The retailer is a holder of a wine shipper permit issued by the  
19                  Alcoholic Beverage Control Commission pursuant to G.S. 18B-  
20                  1001.1."

21                  **SECTION 16.** This act becomes effective October 1, 2003.