

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 828  
Commerce Committee Substitute Adopted 5/25/05  
Third Edition Engrossed 5/26/05  
House Committee Substitute Favorable 7/19/06

Short Title: 2006 Viticulture/Enology Act.

(Public)

Sponsors:

Referred to:

March 23, 2005

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE LAW CONCERNING THE NORTH CAROLINA  
GRAPE GROWERS COUNCIL, TO AMEND THE REVENUE LAWS RELATED  
TO WINE PRODUCTION, TO PROVIDE FOR THE DESIGNATION OF A  
PRIMARY SOURCE FOR THE IMPORTATION OF WINE INTO THE STATE,  
TO AMEND CHAPTER 18B OF THE GENERAL STATUTES CONCERNING  
WINESHOPS AND TO RESTRICT THE USE OF PROMOTIONAL  
ADVERTISING FOR WINE AND MALT BEVERAGES.

The General Assembly of North Carolina enacts:

**SECTION 1.** The title of Part 2J of Article 10 of Chapter 143B of the  
General Statutes reads as rewritten:

"Part 2J. North Carolina Wine and Grape Growers Council."

**SECTION 2.** G.S. 143B-437.90 reads as rewritten:

**"§ 143B-437.90. North Carolina Wine and Grape Growers Council – Creation;  
powers and duties.**

There is created the North Carolina Wine and Grape Growers Council of the  
Department of Commerce. The North Carolina Wine and Grape Growers Council shall  
have the following powers and duties:

- (1) To identify and implement methods for improving North Carolina's  
rank as a wine-producing ~~State~~; State.
- (2) To assure orderly growth and development of North Carolina's grape  
and wine ~~industry~~; industry.
- (3) To achieve public awareness of the quality of North Carolina grapes  
and ~~wine~~; wine.
- (4) To coordinate the interaction of North Carolina's grape and wine  
industry with other segments of the State's economy such as tourism,  
retail trade, and ~~horticulture~~; horticulture.

- 1 (5) To conduct methods of quality assurance of North Carolina's grape and  
2 wine industry to create a sound foundation for further ~~growth~~; growth.
- 3 (6) To assist in the coordination of the activities of the various State  
4 agencies and other organizations contributing to the development of  
5 the grape and wine ~~industry~~; industry.
- 6 (7) To receive and disburse ~~funds~~; funds.
- 7 (8) To enter into contracts for the purpose of developing new or improved  
8 markets or marketing methods for wine and grape ~~products~~; products.
- 9 (9) To contract for research services to improve viticultural and enological  
10 practices in North ~~Carolina~~; Carolina.
- 11 (10) To enter into agreements with any local, state, or national  
12 organizations or agency engaged in education for the purpose of  
13 disseminating information on wine or other viticultural  
14 ~~projects~~; projects.
- 15 (11) To enter into contracts with commercial entities for the purpose of  
16 developing marketing, advertising, and other promotional programs  
17 designed to promote the orderly growth of the North Carolina grape  
18 and wine ~~industry~~; industry.
- 19 (12) To acquire any licenses or permits necessary for performance of the  
20 duties of the ~~Council~~; and Council.
- 21 (13) To develop a State Viticulture Plan that identifies problems and  
22 constraints of the viticultural industry, proposes solutions to those  
23 problems and delineates planning mechanisms for the orderly growth  
24 of the industry."

25 **SECTION 3.** G.S. 143B-437.91 reads as rewritten:

26 "**§ 143B-437.91. North Carolina Wine and Grape Growers-Council – Composition;**  
27 **terms; reimbursement.**

28 (a) The North Carolina Wine and Grape Growers-Council shall consist of 11  
29 members appointed by the Secretary of Commerce in the following manner: seven  
30 commercial grape growers; three winery operators; and one retailer of North Carolina  
31 grape products. For purposes of this Article, a commercial grape grower is one who has  
32 at least three acres of grapes or sells ten thousand dollars (\$10,000) worth of grapes  
33 annually. The Secretary shall appoint members for staggered four-year terms. Members  
34 shall serve until their successors are appointed and qualified. Any member of the  
35 Council may be reappointed for additional terms. Any appointment to fill a vacancy on  
36 the Council shall be for the balance of the unexpired term. Any member of the Council  
37 may be removed by the Secretary for misfeasance, malfeasance, or nonfeasance.

38 (b) Members of the Council shall receive per diem and necessary travel and  
39 subsistence expenses in accordance with G.S. 138-5 from funds appropriated for the  
40 operation of the Council.

41 (c) All clerical and other services required by the Council may be provided by  
42 the Department of Commerce.

43 (d) The Secretary of Commerce shall appoint a chair who shall serve at the  
44 pleasure of the Secretary.

1 (e) The Council may select a secretary who need not be a member of the  
2 Council.

3 (f) The Council shall meet when necessary as determined by the chair or upon  
4 written request of a majority of the members.

5 (g) A majority of the Council shall constitute a quorum for the transaction of  
6 business."

7 **SECTION 4.(a)** G.S. 105-113.81A reads as rewritten:

8 "**§ 105-113.81A. Distribution of part of wine taxes attributable to North Carolina**  
9 **wine.**

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

24 **SECTION 4.(b)** This section becomes effective July 1, 2006.  
25 Notwithstanding the provisions of G.S. 105-113.81A, as amended by this section, for  
26 the 2006-2007 fiscal year, the distribution required by that section shall be made by  
27 October 1, 2006.

28 **SECTION 5.** G.S. 18B-203(a) reads as rewritten:

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

30 ...

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

38 **SECTION 6.** G.S. 18B-1106 reads as rewritten:

39 "**§ 18B-1106. Authorization of wine importer permit.**

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

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

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

3 (c) The holder of a wine importer permit may import and sell to wholesalers only  
4 wine for which it is a primary American source of supply. To be considered a primary  
5 American source of supply, a wine importer must establish that it has lawfully  
6 purchased the wine from the winery, or from an agent of the winery, and by written  
7 contract or otherwise has been authorized by the winery to distribute the wine to  
8 wholesalers in the United States."

9 **SECTION 7.** G.S. 18B-1107 reads as rewritten:

10 **"§ 18B-1107. Authorization of wine wholesaler permit.**

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

12 (1) Receive, possess and transport shipments of fortified and unfortified  
13 ~~wine;~~wine. The wine must be received from one of the following:

14 a. A primary American source of supply for that wine as  
15 recognized by the Commission or as verified by the wholesaler.

16 b. A licensed North Carolina wholesaler who received the wine  
17 from a primary American source of supply and with whom the  
18 second wholesaler has a subcontracting agreement for  
19 distribution of the wine.

20 c. Another wholesaler from whom the purchasing wholesaler is  
21 purchasing the wholesaler's business or from whom the  
22 wholesaler is purchasing the brand or distribution rights for the  
23 wine being received.

24 d. Another wholesaler who also has distribution rights for the wine  
25 being received and from whom the wholesaler is acquiring the  
26 wine in order to address a temporary inventory shortage.

27 (2) Sell, deliver and ship wine in closed containers for purposes of resale  
28 to wholesalers or retailers licensed under this Chapter as authorized by  
29 the ABC ~~laws;~~laws.

30 (3) Furnish and sell wine to its employees, subject to the rules of the  
31 Commission and the Department of ~~Revenue;~~Revenue.

32 (4) In locations where the sale is legal, furnish wine to guests and any  
33 other person who does not hold an ABC permit, for promotional  
34 purposes, subject to rules of the ~~Commission;~~Commission.

35 (5) Sell out-of-date unfortified and fortified wines to holders of cider and  
36 vinegar manufacturer permits, provided that each bottle is marked  
37 "out-of-date" by the wholesaler.

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

40 **SECTION 8.** G.S. 18B-1114 reads as rewritten:

41 **"§ 18B-1114. Authorization of nonresident wine vendor permit.**

42 The holder of a nonresident wine vendor permit may sell, deliver, and ship  
43 unfortified and fortified wine in this State only to wholesalers, importers, and bottlers  
44 licensed under this Chapter, as authorized by the ABC laws. The unfortified and

1 fortified wine must come to rest at the licensed premises of a wine wholesaler in this  
2 State before being resold to a retailer. A nonresident wine vendor permit may be issued  
3 to a winery, a wholesaler, an importer, or a bottler outside North Carolina who desires  
4 to sell, deliver, and ship unfortified and fortified wine into this State. The holder of a  
5 nonresident wine vendor permit may sell, deliver, and ship into this State only wine for  
6 which it is a primary American source of supply. To be considered a primary American  
7 source of supply, a nonresident wine vendor must establish that it has lawfully  
8 purchased the wine from the winery, or from an agent of the winery, and by written  
9 contract or otherwise has been authorized by the winery to distribute the wine to  
10 wholesalers in the United States."

11 **SECTION 9.** G.S. 18B-105(a) reads as rewritten:

12 "(a) General Rule. – No person shall offer or advertise alcoholic beverages in this  
13 State except in compliance with this Article and the rules of the Commission."

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

16 "**§ 18B-105.1. Use of discounts in advertising.**

17 (a) Authorization. – Advertising for an alcoholic beverage may not include a  
18 coupon offering a free alcoholic beverage. No person shall advertise by means of a  
19 coupon or rebate offering a discount off the purchase of a malt beverage or wine,  
20 except as provided in this section. A permittee who holds an on-premises or  
21 off-premises malt beverage or wine permit under G.S. 18B-1001(1) through (6) or a  
22 wine shop permit under G.S. 18B-1001(16) may promote by means of a coupon, a  
23 membership card, a discount card, or a retailer's loyalty card in the following  
24 circumstances:

- 25 (1) The permittee may provide a discount coupon for use by a customer  
26 when purchasing a malt beverage or wine sold at the permittee's retail  
27 location for off-premises consumption.  
28 (2) The permittee may require a customer to use the permittee's  
29 membership card, discount card, or loyalty card in order for the  
30 customer to receive a discounted price when purchasing a malt  
31 beverage or wine sold at the permittee's retail location for off-premises  
32 consumption.

33 (b) Scope. – This section shall not authorize cooperation between a retailer and  
34 an industry member in violation of G.S. 18B-1116."

35 **SECTION 11.** G.S. 18B-1001(16) reads as rewritten:

36 "**§ 18B-1001. Kinds of ABC permits; places eligible.**

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

39 ...

- 40 (16) Wine Shop Permit. – A wine shop permit authorizes the retail sale of  
41 malt beverages, unfortified wine, and fortified wine in the  
42 manufacturer's original container for consumption off the premises,  
43 and authorizes wine tastings on the premises conducted and supervised  
44 by the permittee in accordance with subdivision (15) of this section. It

1 also authorizes the holder of the permit to ship malt beverages,  
2 unfortified wine, and fortified wine in closed containers to individual  
3 purchasers inside and outside the State. The permit may be issued for  
4 retail businesses whose primary purpose is selling malt beverages and  
5 wine for consumption off the premises and regularly and customarily  
6 educating consumers through tastings, classes, and seminars about the  
7 selection, serving, and storing of wine. The holder of the permit is  
8 authorized to sell unfortified wine for consumption on the premises,  
9 provided that the sale of wine for consumption on the premises does  
10 not exceed forty percent (40%) of the establishment's total sales for  
11 any 30-day period. ~~The sale of wine for consumption on the premises~~  
12 ~~shall be limited to those amounts that remain in opened bottles upon~~  
13 ~~the conclusion of an authorized wine tasting, and individual servings~~  
14 ~~shall not exceed four ounces per glass.~~The holder of a wine-tasting  
15 permit not engaged in the preparation or sale of food on the premises is  
16 not subject to Part 6 of Article 8 of Chapter 130A of the General  
17 Statutes."

18 **SECTION 12.** Effective July 1, 2007, G.S. 105-164.13(39) reads as  
19 rewritten:

20 "**§ 105-164.13. Retail sales and use tax.**

21 The sale at retail and the use, storage, or consumption in this State of the following  
22 tangible personal property and services are specifically exempted from the tax imposed  
23 by this Article:

24 ...

- 25 (39) Sales of paper, ink, and other tangible personal property to commercial  
26 printers and commercial publishers for use as ingredients or  
27 component parts of free distribution periodicals and sales by printers  
28 of free distribution periodicals to the publishers of these periodicals.  
29 As used in this subdivision, the term "free distribution periodical"  
30 means a publication that is continuously published on a periodic basis  
31 ~~monthly~~ quarterly or more frequently, is provided without charge to  
32 the recipient, and is distributed in any manner other than by mail."

33 **SECTION 13.** Except as otherwise provided herein, this act is effective  
34 when it becomes law.