

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 130

Short Title: Wine Distribution Territories. (Public)

Sponsors: Senators Brown, Allran, Blue; Bingham, Blake, Daniel, East, Garrou, Gunn, McKissick, Newton, Pate, Preston, Rabon, Soucek, Stevens, Tillman, Tucker, and Vaughan.

Referred to: Commerce.

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO PRESERVE THE THREE-TIER DISTRIBUTION SYSTEM FOR WINE IN NORTH CAROLINA, TO PROHIBIT A WINE WHOLESALER FROM DISTRIBUTING WINE BEYOND ITS DESIGNATED SALES TERRITORY, AND TO CONFIRM THAT GOOD CAUSE FOR THE TERMINATION OF A WINE FRANCHISE DOES NOT INCLUDE A SUPPLIER'S DESIRE TO CONSOLIDATE ITS FRANCHISE OR DISTRIBUTION PATTERN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1200(b) reads as rewritten:

"(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;~~basis.
- (2) To protect wine wholesalers against unfair treatment by ~~wineries;~~wineries.
- (3) To provide wine wholesalers with rights and remedies in addition to those existing by contract or common ~~law;~~and law.
- (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.
- (5) To promote and maintain a sound, stable, and viable three-tier system of distribution of wine to the public."

SECTION 2. G.S. 18B-1201(2) reads as rewritten:

"(2) "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."~~

SECTION 3. G.S. 18B-1203 reads as rewritten:

"§ 18B-1203. Primary area of ~~responsibility;~~responsibility; no discrimination.

(a) Each agreement shall designate ~~a~~the 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 March 21, 1983, are designated sales territories within the meaning of this section. Within 30 days of the effective date of this Article, each~~



1 winery shall notify the Commission in writing of all designations of sales territories as of
2 ~~March 21, 1983~~ territory. A wholesaler shall not distribute any brand of wine to a retailer
3 whose premises are located outside the territory designated in the wholesaler's agreement for
4 that brand. With the approval of the Commission, a wholesaler may distribute wine outside the
5 wholesaler's designated territory during periods of temporary service interruption, when
6 requested to do so by the winery and the wholesaler whose service is interrupted. Unless the
7 winery and wine wholesaler agree otherwise in writing, the territory designated as the
8 wholesaler's "area of primary sales responsibility" as of the effective date of this section shall
9 be the wholesaler's designated sales territory. Redesignations of sales territories occurring after
10 ~~March 21, 1983~~, the effective date of this section shall be reported to the Commission within 30
11 days. No provisions of this Article, however, may prohibit the continuation of a
12 multi-wholesaler agreement entered into before March 21, 1983, as between the winery and the
13 original wine wholesalers ~~thereto~~ thereto, provided, that upon termination of any such
14 agreement the affected territory shall be designated for a single wholesaler.

15 (b) ~~This section may not be construed as restricting sales or sales efforts by any wine~~
16 ~~wholesaler attempting to sell wines within any designated sales territory. A wholesaler shall~~
17 ~~service all retail permit holders within its designated territory without discrimination and shall~~
18 ~~make a good faith effort to make available to each retail permit holder in the territory each~~
19 ~~brand of wine that the wholesaler has been authorized to distribute in that area."~~

20 **SECTION 4.** G.S. 18B-1204 reads as rewritten:

21 **"§ 18B-1204. Cancellation.**

22 Notwithstanding the terms, provisions, or conditions of any agreement, no winery may
23 amend, cancel, terminate, or refuse to continue to renew any agreement, or cause a wholesaler
24 to resign from an agreement, unless good cause exists for amendment, termination,
25 cancellation, nonrenewal, noncontinuation, or resignation. "Good cause" does not include a
26 change in ownership of a ~~winery~~ winery, or the desire of a winery to consolidate its franchises
27 or its distribution patterns without demonstrating a failure of the wholesaler to effectively
28 market or distribute its product. "Good cause" does include:

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

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

47 **SECTION 5.** If any provision of this act or its application is held invalid, the
48 invalidity does not affect other provisions or applications of this act that can be given effect
49 without the invalid provisions or application, and to this end the provisions of this act are
50 severable.

1 **SECTION 6.** This act is effective when it becomes law, and its provisions shall
2 apply to all existing franchise agreements. A winery's shipment of wine to a wholesaler in
3 North Carolina following the effective date of this act shall constitute acceptance by the winery
4 of the terms of this act, which shall be considered incorporated into the agreement between the
5 winery and wholesaler.