

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 130  
Commerce Committee Substitute Adopted 3/29/11

Short Title: Wine Distribution Territories.

(Public)

Sponsors:

Referred to:

February 28, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROHIBIT A WINE WHOLESALER FROM DISTRIBUTING WINE  
3 BEYOND ITS DESIGNATED SALES TERRITORY AND TO AUTHORIZE CERTAIN  
4 INTRATERRITORY TRANSFERS OF WINE BETWEEN OFF-PREMISES WINE  
5 PERMITTEES UNDER COMMON OWNERSHIP.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 18B-1201(2) reads as rewritten:

8 "(2) "Territory" or "sales territory" means the area of primary sales responsibility  
9 expressly or implicitly designated by any agreement between any wine  
10 wholesaler and winery for a brand offered by any winery. ~~The term "area of~~  
11 ~~primary sales responsibility" may not be construed as restricting sales or~~  
12 ~~sales efforts by any wine wholesaler attempting to sell wines within any~~  
13 ~~designated sales territory."~~

14 SECTION 2. G.S. 18B-1203 reads as rewritten:

15 "§ 18B-1203. Primary area of ~~responsibility~~responsibility; no discrimination.

16 (a) Each agreement shall designate ~~a~~the sales territory of the wholesaler. No winery  
17 may enter into more than one agreement for each brand of wine or beverage it offers in any  
18 ~~territory unless the Commission, using the standards of G.S. 18B-1204(4), orders otherwise.~~  
19 ~~Territories served by a wine wholesaler on March 21, 1983, are designated sales territories~~  
20 ~~within the meaning of this section. Within 30 days of the effective date of this Article, each~~  
21 ~~winery shall notify the Commission in writing of all designations of sales territories as of~~  
22 ~~March 21, 1983, territory.~~ A wholesaler shall not distribute any brand of wine to a retailer  
23 whose premises are located outside the territory designated in the wholesaler's agreement for  
24 that brand. With the approval of the Commission, a wholesaler may distribute wine outside the  
25 wholesaler's designated territory during periods of temporary service interruption, when  
26 requested to do so by the winery and the wholesaler whose service is interrupted. Unless the  
27 winery and wine wholesaler agree otherwise in writing, the territory designated as the  
28 wholesaler's "area of primary sales responsibility" as of the effective date of this section shall  
29 be the wholesaler's designated sales territory. Redesignations of sales territories occurring after  
30 March 21, 1983, July 1, 2011, shall be reported to the Commission within 30 days. No  
31 provisions of this Article, however, may prohibit the continuation of a multi-wholesaler  
32 agreement entered into before March 21, 1983, as between the winery and the original wine  
33 wholesalers ~~thereto~~ thereto, provided, that upon termination of any such agreement, the  
34 affected territory shall be designated for a single wholesaler.

35 (b) ~~This section may not be construed as restricting sales or sales efforts by any wine~~  
36 ~~wholesaler attempting to sell wines within any designated sales territory.~~ A wholesaler shall  
37 service retail permit holders within its designated territory without discrimination. Upon



1 request from a retail permit holder, each wholesaler shall make a good faith effort to make  
2 available any brand of wine the wholesaler is authorized to distribute in the territory."

3 **SECTION 3.** G.S. 18B-1001(4) reads as rewritten:

4 "(4) Off-Premises Unfortified Wine Permit. – An off-premises unfortified wine  
5 permit authorizes the retail sale of unfortified wine in the manufacturer's  
6 original container for consumption off the premises and it authorizes the  
7 holder of the permit to ship unfortified wine in closed containers to  
8 individual purchasers inside and outside the State. The permit may be issued  
9 for retail businesses. The permit also authorizes the permittee to transfer  
10 unfortified wine, not more than four times per calendar year, to another  
11 off-premises unfortified wine permittee that is under common ownership or  
12 control as the transferor. Except as authorized by this subdivision, transfers  
13 of wine by off-premises unfortified wine permittees, purchases of wine by a  
14 retail permittee from another retail permittee for the purpose of resale, and  
15 sale of wine by a retail permittee to another retail permittee for the purpose  
16 of resale are unlawful. In addition, a particular brand of wine may be  
17 transferred only if both the transferor and transferee are located within the  
18 territory designated between the winery and the wholesaler on file with the  
19 Commission. Prior to or contemporaneous with any such transfer, the  
20 transferor shall notify each wholesaler who distributes the transferred  
21 product of the transfer. The notice shall be in writing or verifiable electronic  
22 format and shall identify the transferor and transferee, the date of the  
23 transfer, quantity, and items transferred. The permit may also be issued to  
24 the holder of a viticulture/enology course authorization under  
25 G.S. 18B-1114.4. A school obtaining a permit under this subdivision is  
26 authorized to sell wines manufactured during its viticulture/enology program  
27 at one non-campus location in a county where the permittee holds and offers  
28 classes on a regular full-time basis in a facility owned by the permittee. The  
29 permit may also be issued for a winery or a wine producer for sale of its own  
30 unfortified wine during hours when the winery or wine producer's premises  
31 is open to the public, subject to any local ordinance adopted pursuant to  
32 G.S. 18B-1004(d) concerning hours for the retail sale of unfortified wine. A  
33 winery obtaining a permit under this subdivision is authorized to sell wine  
34 manufactured by the winery at one additional location in the county under  
35 the same conditions specified in G.S. 18B-1101(5) for the sale of wine at the  
36 winery; provided, however, that no other alcohol sales shall be authorized at  
37 the additional location. Orders received by a winery by telephone, Internet,  
38 mail, facsimile, or other off-premises means of communication shall be  
39 shipped pursuant to a wine shipper permit and not pursuant to this  
40 subdivision."

41 **SECTION 4.** G.S. 18B-1001(6) reads as rewritten:

42 "(6) Off-Premises Fortified Wine Permit. – An off-premises fortified wine permit  
43 authorizes the retail sale of fortified wine in the manufacturer's original  
44 container for consumption off the premises and it authorizes the holder of  
45 the permit to ship fortified wine in closed containers to individual purchasers  
46 inside and outside the State. The permit may be issued for food businesses.  
47 The permit may also be issued for a winery for sale of its own fortified wine.  
48 Orders received by a winery by telephone, Internet, mail, facsimile, or other  
49 off-premises means of communication shall be shipped pursuant to a wine  
50 shipper permit and not pursuant to this subdivision. The permit also  
51 authorizes the permittee to transfer fortified wine, not more than four times

1                   per calendar year, to another off-premises fortified wine permittee that is  
2                   under common ownership or control as the transferor. Except as authorized  
3                   by this subdivision, transfers of wine by off-premises fortified wine  
4                   permittees, purchases of wine by a retail permittee from another retail  
5                   permittee for the purpose of resale, and sale of wine by a retail permittee to  
6                   another retail permittee for the purpose of resale are unlawful. In addition, a  
7                   particular brand of wine may be transferred only if both the transferor and  
8                   transferee are located within the territory designated between the winery and  
9                   the wholesaler on file with the Commission. Prior to or contemporaneous  
10                   with any such transfer, the transferor shall notify each wholesaler who  
11                   distributes the transferred product of the transfer. The notice shall be in  
12                   writing or verifiable electronic format and shall identify the transferor and  
13                   transferee, the date of the transfer, quantity, and items transferred."

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

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