

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 668 of the Regular Session

As Engrossed: H3/1/07 S3/19/07

A Bill

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007

HOUSE BILL 1651

4
5 By: Representatives Wells, Hall, Adcock, Berry, Burris, Dunn, Edwards, L. Evans, Everett, Gaskill,
6 George, Hoyt, Kidd, King, Lamoureux, M. Martin, Overbey, Pierce, Pyle, Rosenbaum, Saunders, Wills
7 By: Senators T. Smith, Whitaker

8
9
10 **For An Act To Be Entitled**

11 AN ACT TO PROMOTE FREE TRADE AMONG IN-STATE AND
12 OUT-OF-STATE SMALL WINERIES; TO PROMOTE ECONOMIC
13 DEVELOPMENT AND TOURISM IN ARKANSAS; TO LICENSE
14 SMALL FARM WINERIES; TO ALLOW SMALL FARM WINERIES
15 TO OBTAIN OFF-PREMISES RETAIL SALES OUTLETS IN
16 WET COUNTIES; AND FOR OTHER PURPOSES.

17
18 **Subtitle**

19 AN ACT TO PROMOTE FREE TRADE AMONG IN-
20 STATE AND OUT-OF-STATE SMALL WINERIES
21 AND TO PROMOTE ECONOMIC DEVELOPMENT AND
22 TOURISM IN THE STATE OF ARKANSAS.

23
24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26
27 SECTION 1. Arkansas Code Title 3, Chapter 5 is amended to add an
28 additional subchapter to read as follows:

29 3-5-1601. Definition.

30 As used in this subchapter, "small farm winery" means a wine-making
31 establishment that does not sell more than two hundred fifty thousand
32 (250,000) gallons of wine, the alcoholic content of which does not exceed
33 twenty-one percent (21%), annually as reported on the federal tax report form
34 TTB 5120-17, as it existed on January 1, 2007. For the purposes of this
35 subchapter, a winery or a group of wineries, consisting of at least fifty



1 percent (50%) common ownership, is to be considered one (1) small farm
2 winery.

3
4 3-5-1602. Licensing of small farm wineries.

5 (a) An in-state or out-of-state small farm winery may apply to the
6 Alcoholic Beverage Control Board for a small farm winery license.

7 (b)(1) A small farm winery may be licensed by the board.

8 (2) A license shall:

9 (A) Show the registration number and location of the
10 winery;

11 (B) Show the name of the person that owns or operates the
12 winery; and

13 (C) Be conspicuously posted at the small farm winery.

14 (c)(1) A small farm winery license authorizes the licensee to perform
15 the following functions without the small farm winery having to obtain a
16 separate license:

17 (A) Manufacture wines and bottle wines produced by that
18 small farm winery;

19 (B) Bottle wines produced by another small farm winery;

20 (C) Serve on the premises or at small farm winery off-
21 premises retail sites complimentary samples of wine produced by the small
22 farm winery or another licensed small farm winery, if the small farm winery
23 or its off-premises retail site is located in a wet territory;

24 (D) Sell at retail by the drink or by the package wine
25 produced on the premises of the small farm winery or produced by another
26 small farm winery, if all sales occur in a wet territory and at:

27 (i) The small farm winery off-premises retail sites;
28 or

29 (ii) Fairs and food and wine festivals, with the
30 permission and the consent of the management of the events. A sales and use
31 tax permit is also required;

32 (E) Sell and transport wine produced on the premises of
33 the small farm winery or of another small farm winery to wholesale and retail
34 license holders and small farm winery license holders. To exercise the
35 privileges of this subdivision (c)(1)(E), the small farm winery must obtain a
36 wine wholesale permit; and

1 (F) Sell for consumption on the premises wine produced by
2 the small farm winery or another small farm winery and purchased by the drink
3 or by the package at the licensed premises, if the small farm winery is
4 located in a wet territory.

5 (2) A small farm winery off-premises retail site shall be
6 separately licensed under § 3-5-1605(3) before performing the operations
7 listed in subdivision (c)(1) of this section at the off-premises retail site.

8 (d) An applicant for a small farm winery license shall submit with its
9 application to the board a copy of the small farm winery's federal basic
10 permit and proof documenting its annual wine production.

11
12 3-5-1603. Restaurant wine license – Retail malt beverage license.

13 (a) The Alcoholic Beverage Control Board may issue a restaurant wine
14 license and a retail malt beverage license to a small farm winery license
15 holder, if the issuance of the restaurant wine license and the retail malt
16 beverage license are in connection with the establishment and operation of a
17 restaurant, hotel, inn, bed and breakfast, museum, conference center, or any
18 similar business enterprise for the purpose of promoting viticulture,
19 enology, and tourism.

20 (b) The retail malt beverage license issued under this section shall
21 limit the license to the sale of malt beverages for the consumption on the
22 premises only.

23
24 3-5-1604. Existing native winery licenses.

25 (a) A person that holds a license as a native winery issued under this
26 chapter before the effective date of this subchapter may conduct business as
27 a small farm winery until the native wine license expires.

28 (b) Upon the expiration of a native wine license issued under this
29 chapter before the effective date of this subchapter, the Alcoholic Beverage
30 Control Board may issue a small farm winery license as part of the renewal
31 process if the winery:

32 (1) Meets the criteria under § 3-5-1602(c)(1);

33 (2) Is in good standing; and

34 (3) Submits the winery's federal basic permit and proof of
35 annual wine production to the board.

36

1 3-5-1605. License fees generally.

2 (a) For the privilege of doing business respectively, as indicated in
3 this section, there shall each fiscal year, beginning July 1, be imposed,
4 assessed, levied, and collected the following license fees:

5 (1)(A) For the privilege of manufacturing wine in quantities not
6 to exceed five thousand (5,000) gallons, a license fee of one dollar (\$1.00)
7 per thousand gallons shall be paid by the manufacturer.

8 (B) However, any persons in this state shall have the
9 right to manufacture free from this license fee from fruits or vegetables,
10 wine for consumption in their homes by themselves and their guests, but not
11 sale, in quantities not to exceed two hundred (200) gallons;

12 (2) For the privilege of manufacturing small farm wine in excess
13 of five thousand (5,000) gallons, a license fee of two hundred fifty dollars
14 (\$250) shall be paid by the manufacturer;

15 (3) For the privilege of selling small farm winery wine, except
16 by a manufacturer for consumption at the manufacturer's winery there shall be
17 paid for each retail dealer's license a fee of fifteen dollars (\$15.00).
18 This subdivision (a)(3) applies to all retail licenses for grocery stores,
19 convenience stores, liquor stores, and package stores that sell malt
20 beverages and wine;

21 (4) For the privilege of selling small farm wine except by a
22 manufacturer at his winery, there shall be paid for each wholesale dealer's
23 license a fee of fifty dollars (\$50.00). This subdivision (4) applies to all
24 beverage alcohol wholesale distributors;

25 (5) For the privilege of selling small farm winery wine at the
26 winery or in this state, there is imposed, assessed, and levied a tax of
27 seventy-five cents (75¢) per gallon upon all the small farm winery wine
28 manufactured and sold in this state under the provisions of this subchapter;
29 and

30 (6) For the privilege of selling small farm winery light wine at
31 the winery or in this state, there is imposed, assessed, and levied a tax of
32 twenty-five cents (25¢) per gallon upon all light wine manufactured and sold
33 in this state under the provisions of this subchapter.

34 (7) Existing licenses.

35 (A) A person that holds a license for the sale of native
36 wine issued under this chapter before the effective date of this subchapter

1 may conduct business as a small farm winery wholesaler or retailer until the
2 native wine license expires.

3 (B) Upon the expiration of a native wine license issued
4 under this chapter on or before the effective date of this subchapter, the
5 Alcoholic Beverage Control Board may issue a new license as part of the
6 renewal process if the wholesaler or retailer:

7 (i) Meets the criteria under this section; and

8 (ii) Is in good standing.

9 (b) Tax on wine shall be based on the amount sold.

10
11 3-5-1606. Rules.

12 The Alcoholic Beverage Control Board shall promulgate rules to
13 implement this subchapter.

14
15 3-5-1607. Sales on any day of the week.

16 Notwithstanding any law to the contrary, small farm winery wine may be
17 sold at any winery located in this state for on-premises or off-premises
18 consumption on any day of the week.

19
20 3-5-1608. Bond.

21 By consent of the Director of the Department of Finance and
22 Administration, the small farm winery may file a bond with the director, the
23 bond to be approved by him, which will entitle the small farm winery to the
24 privilege of making settlement of his taxes every thirty (30) days, the time
25 to be set by the director.

26
27 3-5-1609. Penalty.

28 A person who violates any provision of this subchapter or any
29 reasonable rule or regulation adopted by the Director of the Alcoholic
30 Beverage Control Division or the Director of the Department of Finance and
31 Administration shall be guilty of guilty of a Class B misdemeanor.

32
33 SECTION 2. Arkansas Code § 3-2-411 is amended to read as follows:

34 3-2-411. Subchapter incorporated into division approvals -
35 Applicability - Waiver.

36 (a) The terms, conditions, and requirements of this subchapter are

1 hereby expressly made a part of the terms of and as conditions to the
 2 approval granted by the Alcoholic Beverage Control Division to distillers,
 3 manufacturers, importers, or producers, to do business in the state, and by
 4 the application for, the acceptance of, or the conduct of business under any
 5 such approval, a distiller, manufacturer, importer, or producer consents and
 6 agrees to comply with the terms, conditions, and requirements of this
 7 subchapter.

8 (b) This subchapter does not apply to manufacturers or wholesalers of
 9 ~~Arkansas native wine~~ small farm winery wines. For the purpose of this
 10 section "small farm winery" has the same meaning as defined by § 3-5-1601.

11 (c) No right, duty, or other provision set out in this subchapter may
 12 be waived by any agreement or contract between any wholesaler and supplier
 13 regardless of whether any such waiver agreement was made prior to or after
 14 July 15, 1991.

15

16 SECTION 3. Arkansas Code Title 3, Chapter 5, Subchapters 4 and 5 are
 17 repealed.

18

~~Subchapter 4.~~

19

~~Native Wine Generally.~~

20

21 ~~3-5-401. Title.~~

22

~~This subchapter shall be known and may be cited as the "Native Wine
 23 Law".~~

24

25 ~~3-5-402. Definitions.~~

26

~~As used in this subchapter, unless the context otherwise requires:~~

27

~~(1) "Consumer" means any person who receives or who in any way
 28 comes into the possession of wine for the purpose of consuming it, giving it
 29 away, or distributing it in any other way other than by sale, barter, or
 30 exchange;~~

31

~~(2) "Light wine" means any fermented alcoholic liquor made from
 32 grapes, berries, fruits, honey, or vegetables and shall include any other
 33 mixture containing the fermented juices of grapes, berries, fruits, honey, or
 34 vegetables, having an alcoholic content between one half of one percent
 35 (0.5%) and five percent (5%) alcohol by weight;~~

36

~~(3) "Manufacture" means to do or to perform any act or thing in~~

1 ~~the process of making wine;~~

2 ~~(4) "Manufacturer" means any person who owns, operates, or~~
3 ~~conducts a winery, but it does not mean the employees of those persons;~~

4 ~~(5) "Mead" means wine made from honey;~~

5 ~~(6)(A) "Native wine" means wine made from grapes, berries, other~~
6 ~~fruits, honey, or vegetables grown or harvested in the State of Arkansas.~~

7 ~~(B) "Native wine" includes mead;~~

8 ~~(7) "Person" means one (1) or more natural persons, a company,~~
9 ~~corporation, partnership, syndicate, or association;~~

10 ~~(8) "Retail dealer" means any person who sells wine in~~
11 ~~quantities of five (5) gallons or less to the consumer;~~

12 ~~(9) "Transport" means to carry, convey, move, or haul by~~
13 ~~persons, animals, or vehicles, or by any other means whatever, wine from one~~
14 ~~(1) place to another place, whether the places are definitely designated or~~
15 ~~not;~~

16 ~~(10) "Wholesale dealer" means any person who sells wine to~~
17 ~~retail dealers in any quantities;~~

18 ~~(11) "Wine" means any fermented alcoholic liquor made from~~
19 ~~grapes, berries, fruits, honey, or vegetables and shall include any other~~
20 ~~mixture containing the fermented juices of grapes, berries, fruits, honey, or~~
21 ~~vegetables, having an alcoholic content of more than five percent (5%)~~
22 ~~alcohol by weight; and~~

23 ~~(12) "Winery" means any place or establishment where wine is~~
24 ~~manufactured in whole or in part.~~

25
26 ~~3-5-403. Penalty.~~

27 ~~Whoever shall violate any provision of this subchapter or any~~
28 ~~reasonable rule or regulation adopted by the Director of the Alcoholic~~
29 ~~Beverage Control Division or the Director of the Department of Finance and~~
30 ~~Administration shall be guilty of a misdemeanor and upon conviction thereof,~~
31 ~~in addition to the other penalties prescribed in this subchapter, shall be~~
32 ~~guilty of a Class B misdemeanor.~~

33
34 ~~3-5-404. Duties and powers of administrating officers.~~

35 ~~(a) The Director of the Alcoholic Beverage Control Division shall have~~
36 ~~supervision of the enforcement of this subchapter, and the Director of the~~

1 ~~Department of Finance and Administration shall collect all taxes and license~~
2 ~~fees required to be paid by any of its provisions, and in this respect they~~
3 ~~shall be charged with the full administration thereof.~~

4 ~~(b) The Director of the Alcoholic Beverage Control Division shall from~~
5 ~~time to time promulgate reasonable rules and regulations for the effective~~
6 ~~enforcement and administration of this subchapter.~~

7 ~~(c) The Director of the Department of Finance and Administration shall~~
8 ~~from time to time promulgate reasonable rules and regulations for the~~
9 ~~collection of the taxes and fees.~~

10 ~~(d) To that end, the Director of the Alcoholic Beverage Control~~
11 ~~Division and the Director of the Department of Finance and Administration~~
12 ~~shall prepare and provide the necessary blanks, forms, records, and other~~
13 ~~like supplies as the effective administration and enforcement of this~~
14 ~~subchapter may require.~~

15 ~~(e) The Director of the Alcoholic Beverage Control Division and the~~
16 ~~Director of the Department of Finance and Administration with respect to the~~
17 ~~collection of taxes or license fees are empowered to require all reports,~~
18 ~~invoices, or inspections as may be reasonably necessary to secure full, fair,~~
19 ~~and complete compliance with the provisions of this subchapter. All~~
20 ~~reasonable rules and regulations so adopted, so long as they remain in~~
21 ~~effect, shall have the same force as if written into this subchapter.~~

22
23 ~~3-5-405. Manufacture and sale authorized.~~

24 ~~(a) It shall be lawful to manufacture native wine from the juices of~~
25 ~~grapes, berries, other fruits, honey, and from vegetables grown or harvested~~
26 ~~in the State of Arkansas and to sell the wine in and out of this state.~~

27 ~~(b)(1) However, during a period of a native wine industry disaster~~
28 ~~relief program, as declared by the Director of the Department of Finance and~~
29 ~~Administration of this state in the manner authorized by law, a native winery~~
30 ~~may acquire from sources outside this state quantities of grapes, berries,~~
31 ~~fruits, or vegetables, or juices, pulp, or blendable wine produced therefrom,~~
32 ~~to be used in the manufacture of native wine in this state, in quantities~~
33 ~~which do not exceed the percentage of each such product, as determined by the~~
34 ~~native wine industry disaster relief order of the Director of the Department~~
35 ~~of Finance and Administration, as being representative of the percentage of~~
36 ~~each of the products during each year covered by the order of the Director of~~

1 ~~the Department of Finance and Administration deemed by him or her to have~~
2 ~~resulted or to result from the loss of production due to the natural~~
3 ~~disaster, as determined by the Director of the Department of Finance and~~
4 ~~Administration and set forth in his or her order.~~

5 ~~(2) Whenever reference is made in this section and §§ 3-5-801—~~
6 ~~3-5-807 to the acquisition of grapes, berries, fruits, or vegetables from~~
7 ~~sources outside this state to be used for the purposes and in the quantities~~
8 ~~authorized in this section and in §§ 3-5-804 and 3-5-805, for the production~~
9 ~~of native wines, the terms shall also be deemed to mean the acquisition of~~
10 ~~equivalent amounts thereof in the form of juices, pulp, or blendable wines to~~
11 ~~be used in the manufacture or blending of native wines in this state within~~
12 ~~the allowable percentages of such products used in the preparation of juices,~~
13 ~~pulp, or blendable wines as set forth in the order by the Director of the~~
14 ~~Department of Finance and Administration.~~

15
16 ~~3-5-406. Manufacture and sale a privilege—Purpose of subchapter.~~

17 ~~(a) The business of manufacturing or selling native wine is declared,~~
18 ~~under the Constitution and laws of the State of Arkansas, to be a privilege.~~

19 ~~(b) Some of the purposes of this subchapter are to impose, assess, and~~
20 ~~levy certain license fees and taxes upon the exercise of that privilege.~~

21
22 ~~3-5-407. License fees generally.~~

23 ~~For the privilege of doing business respectively, as indicated in this~~
24 ~~section, there shall each fiscal year, beginning July 1, be imposed,~~
25 ~~assessed, levied, and collected the following license fees:~~

26 ~~(1)(A) For the privilege of manufacturing native wine in~~
27 ~~quantities not to exceed five thousand (5,000) gallons, a license fee of one~~
28 ~~dollar (\$1.00) per thousand gallons shall be paid by the manufacturer.~~

29 ~~(B)(i) However, any persons in this state shall have the~~
30 ~~right to manufacture free from this license fee from grapes, berries, or~~
31 ~~other fruits or vegetables grown in the State of Arkansas, native wine or~~
32 ~~light wine for consumption in their homes by themselves and their guests, but~~
33 ~~not for sale, in quantities not to exceed two hundred (200) gallons.~~

34 ~~(ii) Provided, nothing herein shall be deemed to~~
35 ~~authorize the manufacture of wine or light wine in any area which has voted~~
36 ~~against the manufacture or sale of intoxicating liquors;~~

1 ~~(2) For the privilege of manufacturing native wine in excess of~~
2 ~~five thousand (5,000) gallons, a license fee of two hundred fifty dollars~~
3 ~~(\$250) shall be paid by the manufacturer;~~

4 ~~(3) For the privilege of selling native wine, except by a~~
5 ~~manufacturer at his winery, there shall be paid for each retail dealer's~~
6 ~~license a fee of fifteen dollars (\$15.00);~~

7 ~~(4) For the privilege of selling native wine, except by a~~
8 ~~manufacturer at his winery, there shall be paid for each wholesale dealer's~~
9 ~~license a fee of fifty dollars (\$50.00).~~

10
11 ~~3-5-408. Licensing of wineries.~~

12 ~~(a) Every winery in the State of Arkansas must be licensed by the~~
13 ~~Director of the Alcoholic Beverage Control Division and must be registered in~~
14 ~~the office of the director. Every license shall show the registration number~~
15 ~~and location of the winery and shall show the name of the manufacturer~~
16 ~~owning, conducting, or operating the winery, and the license shall be~~
17 ~~conspicuously posted at the winery.~~

18 ~~(b) It is the duty of the director to prescribe reasonable rules~~
19 ~~requiring proper sanitary conditions about the winery and to see that these~~
20 ~~conditions are met before he shall issue any license.~~

21 ~~(c) The director shall also prescribe reasonable rules requiring the~~
22 ~~process of manufacturing native wine to be carried on under proper sanitary~~
23 ~~conditions and in a sanitary manner.~~

24 ~~(d) For any failure to comply with all the reasonable rules, the~~
25 ~~director shall revoke the license of any winery.~~

26
27 ~~3-5-409. Tax on manufacture and sale — Exception.~~

28 ~~(a)(1) Under the provisions of this subchapter, for the privilege of~~
29 ~~manufacturing wine and for selling it at the winery or in this state, there~~
30 ~~is imposed, assessed, and levied a tax of seventy five cents (75¢) per gallon~~
31 ~~upon all the wine manufactured and sold in this state under the provisions of~~
32 ~~this subchapter.~~

33 ~~(2) For the privilege of manufacturing light wine under the~~
34 ~~provisions of this subchapter, and for selling it at the winery or in this~~
35 ~~state, there is imposed, assessed, and levied a tax of twenty five cents~~
36 ~~(25¢) per gallon upon all light wine manufactured and sold in this state~~

1 ~~under the provisions of this subchapter.~~

2 ~~(b) By consent of the Director of the Department of Finance and~~
3 ~~Administration, the manufacturer may file a bond with the director, the bond~~
4 ~~to be approved by him, which will entitle the manufacturer to the privilege~~
5 ~~of making settlement of his taxes every thirty (30) days, the time to be set~~
6 ~~by the director.~~

7 ~~(c) However, any person in this state shall have the right to~~
8 ~~manufacture, free from the tax, from grapes, berries, or other fruits or~~
9 ~~vegetables grown in the State of Arkansas, native wine or light wine for~~
10 ~~consumption in their home by themselves and guests but not for sale, in~~
11 ~~quantities not to exceed two hundred (200) gallons.~~

12
13 ~~3-5-410. Manner of sale.~~

14 ~~All native wine, whether sold by the manufacturer, retailer, or~~
15 ~~wholesale dealer, must be sold in original packages and in the following~~
16 ~~lots:~~

17 ~~(1) The manufacturer may sell to the consumer at the winery in~~
18 ~~lots not to exceed five (5) gallons and to either wholesale or retail dealers~~
19 ~~in lots not less than five (5) gallons. However, the lots may be contained in~~
20 ~~packages of less than five (5) gallons each;~~

21 ~~(2) Retail dealers may sell only to consumers and in lots not to~~
22 ~~exceed five (5) gallons;~~

23 ~~(3) Wholesale dealers may sell only to retail dealers and in~~
24 ~~lots of any quantity.~~

25
26 ~~3-5-411. Transportation.~~

27 ~~(a) It shall be lawful to transport native wine in the original~~
28 ~~package along any highway, road, street, or other thoroughfare of travel.~~

29 ~~(b) It shall be unlawful to transport wine along any highway, road,~~
30 ~~street, or other thoroughfare of travel except in the original package.~~

31 ~~(c)(1) It is lawful for any winery in the State of Arkansas to ship~~
32 ~~wines out of the state by common carrier or other appropriate parcel delivery~~
33 ~~service and for common carriers and other appropriate parcel delivery~~
34 ~~services to accept wine from Arkansas wineries for delivery outside the State~~
35 ~~of Arkansas.~~

36 ~~(2)(A) An individual who purchases native Arkansas wine at the~~

1 ~~winery may transport the wine pursuant to § 3-5-504 or may have the purchase~~
2 ~~shipped to him or her at the individual's home by common carrier or~~
3 ~~appropriate parcel delivery service.~~

4 ~~(B) Under subdivision (c)(2)(A) of this section, it is~~
5 ~~lawful for:~~

6 ~~(i) Any winery in the State of Arkansas to ship~~
7 ~~wines within the state by common carrier or other appropriate parcel delivery~~
8 ~~service; and~~

9 ~~(ii) Common carriers and other appropriate parcel~~
10 ~~delivery services to accept wine from Arkansas wineries for delivery within~~
11 ~~the State of Arkansas.~~

12
13 ~~3-5-412. Disposition of funds.~~

14 ~~(a) All permits or license fees or taxes, penalties, fines, and costs~~
15 ~~received by the Director of the Department of Finance and Administration~~
16 ~~under the provisions of this subchapter, with the exception of the tax~~
17 ~~allocated in subsection (b) of this section, shall be general revenues and~~
18 ~~shall be deposited in the State Treasury to the credit of the State~~
19 ~~Apportionment Fund. The Treasurer of State shall allocate and transfer these~~
20 ~~amounts to the various State Treasury funds participating in general revenues~~
21 ~~in the respective proportions to each as provided by, and to be used for the~~
22 ~~respective purposes set forth in, the Revenue Stabilization Law of Arkansas,~~
23 ~~§ 19-5-101 et seq.~~

24 ~~(b)(1) All revenues derived from five cents (5¢) per gallon of the tax~~
25 ~~levied upon native wine by § 3-5-409 shall be deposited in the State Treasury~~
26 ~~as special revenues. The net amount thereof shall be credited to the~~
27 ~~University of Arkansas Fund to be used exclusively for promoting research~~
28 ~~concerning the production of wine grapes and the manufacture of wine in~~
29 ~~Arkansas and in supporting the Arkansas native wine industry.~~

30 ~~(2) All revenues derived from seventy cents (70¢) per gallon of~~
31 ~~the tax levied upon wine by § 3-5-409 shall be deposited in the State~~
32 ~~Treasury as gross revenues. The net amount thereof shall be credited to the~~
33 ~~respective funds and accounts in the respective proportions to each and to be~~
34 ~~used for the respective purposes as provided in the Revenue Stabilization~~
35 ~~Law, § 19-5-101 et seq.~~

36

1 ~~3-5-413. Wineries—Sale of wine for on-premises or off-premises~~
2 ~~consumption.~~

3 ~~(a) Notwithstanding the provisions of § 3-5-410 or any other law to~~
4 ~~the contrary, wine may be sold at any winery located in this state for on-~~
5 ~~premises or off-premises consumption on any day of the week.~~

6 ~~(b) The Alcohol Beverage Control Board is hereby authorized to~~
7 ~~promulgate reasonable rules and regulations for the on-premises sale with~~
8 ~~foods, and off-premises package sale, labeling, and identification, of wine~~
9 ~~sold at wine outlets maintained on the premises and operated in connection~~
10 ~~with a wine manufacturing facility in this state throughout the week, and~~
11 ~~such regulations shall include the following minimum requirements:~~

12 ~~(1) The winery shall provide tours through their cellars;~~

13 ~~(2) Only sealed containers may be removed from the winery~~
14 ~~premises;~~

15 ~~(3)(A) That packages sold on Sundays for off-premises~~
16 ~~consumption shall have attached around the central seam of each such package~~
17 ~~a tape or other seal approved by the Alcoholic Beverage Control Board to seal~~
18 ~~such package.~~

19 ~~(B) Said tape or seal shall be affixed in such manner as~~
20 ~~directed by the Alcoholic Beverage Control Board which shall prohibit the~~
21 ~~opening thereof without breaking such tape or seal.~~

22 ~~(C) On each such package shall be stamped in ink the words~~
23 ~~"Not to be opened on date of sale by order of the Arkansas Alcoholic Beverage~~
24 ~~Control Board" and stating the penalty for violating such order in letters of~~
25 ~~such minimum height and size as may be prescribed by the Alcoholic Beverage~~
26 ~~Control Board.~~

27 ~~(e) Breaking the seal required by subdivision (b)(3) of this section~~
28 ~~on the date of sale shall be a Class C misdemeanor.~~

29
30 ~~Subchapter 5.~~

31 ~~Native Wines—Transportation.~~

32
33 ~~3-5-501. Legislative determinations and intent.~~

34 ~~(a) The General Assembly, in the passage of this subchapter, is~~
35 ~~eognizant of the practice of Arkansas wineries who produce native wine in~~
36 ~~cooperating with the efforts of the State Parks, Recreation, and Travel~~

1 ~~Commission in promoting the tourist industry of this state by opening their~~
2 ~~cellars and vineyards to tourists, by providing official tour guides, and by~~
3 ~~expending sums of money for the construction of vineyard observation towers,~~
4 ~~vineyard roads, tourist centers, and tunnels for the proper flow of travel~~
5 ~~through their wine cellars, and that these activities by Arkansas wineries~~
6 ~~who produce native wine have promoted the tourist industry in Arkansas, and~~
7 ~~are of substantial benefit in promoting the economy and welfare of this~~
8 ~~state.~~

9 ~~(b) The General Assembly further recognizes that quantities of native~~
10 ~~wines are sold at the wineries in this state to connoisseurs of vintage wines~~
11 ~~who purchase the native wines to stock their home wine cellars, but in the~~
12 ~~transportation of such wines, persons may often find themselves in technical~~
13 ~~violation of the laws of this state by transporting greater quantities of~~
14 ~~native wine through dry counties than are authorized by law.~~

15 ~~(c) It is, therefore, essential to the development of native wine~~
16 ~~producing industry in this state, with related economic benefits to farms and~~
17 ~~orchards which produce fruits and berries used in native wine production, and~~
18 ~~in improved employment advantages enjoyed by those directly or indirectly~~
19 ~~engaged in native wine production or allied employment, that procedures be~~
20 ~~developed for the lawful, yet regulated, movement of native wines within the~~
21 ~~state and through the state so long as the native wine is not used in~~
22 ~~violation of any local option law.~~

23 ~~(d) The General Assembly further determines that the procedures set~~
24 ~~forth hereinafter provide reasonable regulations for the lawful~~
25 ~~transportation of native wines upon the public highways of this state which,~~
26 ~~if transported in compliance herewith, shall not be in violation of state law~~
27 ~~or of any local initiated act prohibiting or restricting the manufacture,~~
28 ~~possession, or sale of alcoholic beverages in this state.~~

29 ~~(e) It is the intent of this subchapter to establish regulated~~
30 ~~procedures for transportation of native wine on the public highways of this~~
31 ~~state which are purchased by the purchaser in the manner provided in this~~
32 ~~subchapter for transportation to a destination outside the State of Arkansas~~
33 ~~or to a destination within the state in which the lawful manufacture,~~
34 ~~possession, or sale of alcoholic beverages is prohibited.~~

35
36 ~~3-5-502. Penalty.~~

1 ~~Any person who shall knowingly or illegally violate any of the~~
2 ~~provisions of this subchapter shall be guilty of a Class B misdemeanor.~~

3
4 ~~3-5-503. Labeling for transportation.~~

5 ~~(a) The Alcoholic Beverage Control Board is authorized to promulgate~~
6 ~~reasonable rules and regulations for the labeling and identification of~~
7 ~~quantities of native wine purchased at wine outlets maintained on the~~
8 ~~premises and operated in connection with a native wine manufacturing facility~~
9 ~~in this state, which would identify native wines and authorize the~~
10 ~~transportation of them upon the public highways of this state to a~~
11 ~~destination outside this state or to a destination within this state in which~~
12 ~~the lawful possession or sale of alcoholic beverages is not prohibited by~~
13 ~~law.~~

14 ~~(b) The regulation shall include minimum requirements as follows:~~

15 ~~(1)(A) Each case or partial case of native wine sold at a retail~~
16 ~~outlet of native wine manufacturers shall have attached around the central~~
17 ~~seam of each case a tape or other seal approved by the Alcoholic Beverage~~
18 ~~Control Board to seal the package.~~

19 ~~(B) The tape or seal shall be affixed in the manner as~~
20 ~~directed by the Alcoholic Beverage Control Board which shall prohibit the~~
21 ~~opening of the case in transit or which if opened in transit would enable any~~
22 ~~law enforcement officer to determine that the sealed case had been unlawfully~~
23 ~~opened;~~

24 ~~(2) On each case shall be stamped in ink the words: "Not to Be~~
25 ~~Opened in Transit by Order of the Arkansas Alcoholic Beverage Control Board,"~~
26 ~~in letters of such minimum height and size as may be prescribed by the~~
27 ~~Alcoholic Beverage Control Board;~~

28 ~~(3)(A) In addition thereto, the case shall have stamped or~~
29 ~~printed on it substantially the following form:~~

30
31 ~~ARKANSAS NATIVE WINE TRANSIT PERMIT~~

32
33 ~~—This package contains Arkansas Native Wine produced by:~~

34
35 ~~....., and sold to~~

1 ~~_____ (Name and Address of Winery)~~

2

3

4 ~~.....~~

5

6 ~~_____ (Name of Purchaser) _____ (Address)~~

7

8 ~~On _____, for transit to~~

9

10 ~~_____ (Date of Sale)~~

11

12 ~~.....~~

13 ~~_____ (Name and Address of Destination)~~

14

15 ~~(B) Each case or partial case of native wine shall be stamped in the manner as provided in this section, and there shall be written on each case or partial case the information required in this section.~~

16

17 ~~3-5-504. Transportation by purchaser authorized—Limitation.~~

18

19 ~~(a) Any person who shall purchase native wine at retail outlets maintained on the premises of, and operated by, the native wine manufacturer may transport a quantity of not more than three (3) cases, not to exceed three (3) gallons per case, of Arkansas produced native wine. If the cases are packaged, sealed, and stamped in the manner as provided in § 3-5-503, they may be transported upon the public highways of this state without the transportation of them being in violation of any laws of this state or of any local ordinances prohibiting the manufacture, possession, or sale of alcoholic beverages in any dry area through which they are transported on the public highway. This is true so long as the container has been unopened and is being transported by a vehicle to a destination, as reflected on the package, outside the State of Arkansas or to a destination within the State of Arkansas in which the manufacture, possession, or sale of alcoholic beverages is not prohibited by law.~~

20

21 ~~(b) For the purposes of this subchapter, each purchaser of Arkansas-produced native wine shall be entitled to purchase not more than three (3) cases of native wine per purchaser as reflected on the sealed cases thereof and may transport native wine in any vehicle under the provisions of this~~

22

1 ~~subchapter.~~

2 ~~(c) Nothing in this subchapter shall be construed to limit the~~
3 ~~transportation of three (3) cases per vehicle.~~

4 ~~(d) Nothing in this subchapter shall be construed to grant permission~~
5 ~~or authority for any person to transport an unlawful quantity of native wine~~
6 ~~to a destination in, or for possession, sale, or use in, any county, city, or~~
7 ~~portion thereof in which the manufacture, possession, or sale of alcoholic~~
8 ~~beverages is prohibited by law.~~

9
10 ~~3-5-505. Package to remain unopened — Inspection.~~

11 ~~(a) Any person purchasing Arkansas produced native wines and~~
12 ~~transporting them in the manner authorized in this subchapter shall not open~~
13 ~~any container or break any seal or package in which the wines are packaged~~
14 ~~for transportation in compliance with this subchapter until the package~~
15 ~~reaches the destination thereof as designated on the sealed package.~~

16 ~~(b) All cases of Arkansas produced native wine transported under the~~
17 ~~provisions of this subchapter shall be made available for inspection, upon~~
18 ~~request, by any law enforcement officer.~~

19 ~~(c) If a law enforcement officer determines it necessary to open the~~
20 ~~case for any lawful inspection, he shall attach to the case a statement, in~~
21 ~~writing, identifying the name, address, and commission of the officer and the~~
22 ~~site, hour, and date on which the case has been opened, in order that if the~~
23 ~~person transporting the package is required to submit it for further~~
24 ~~inspection, there will be a proper identification thereon that it was opened~~
25 ~~for inspection and has not been opened in violation of this subchapter.~~

26
27 ~~SECTION 4. NOT TO BE CODIFIED. In the event that this act, or any~~
28 ~~part thereof, is determined by a court to be unconstitutional, this act shall~~
29 ~~become void and all wines, including native wines, distributed for sale in~~
30 ~~the State of Arkansas shall be distributed under § 3-2-401 et seq. and sold~~
31 ~~by licensed retailers under § 3-4-201 et seq.~~

32
33 ~~SECTION 5. Arkansas Code § 3-5-607 is repealed.~~

34 ~~3-5-607. Tax incentive for export of local wines.~~

35 ~~(a) In order to encourage Arkansas wineries to seek new and broader~~
36 ~~markets for Arkansas wines outside of Arkansas and to enable the wineries to~~

1 ~~be less dependent upon Arkansas markets for the sale of their wines, thereby~~
2 ~~giving an incentive for the purchase of more Arkansas fruits and vegetables~~
3 ~~to be used in the production of wines for sale outside this state, the~~
4 ~~General Assembly determines that the establishment of a tax incentive is~~
5 ~~necessary to accomplish this purpose.~~

6 ~~(b) The tax incentive shall be as follows: For every one and one half~~
7 ~~(1 1/2) gallons of Arkansas grown wine that an Arkansas winery sells and ships~~
8 ~~outside the State of Arkansas, the Arkansas winery shall receive a seventy~~
9 ~~cent tax credit against tax it must pay for out-of-state wines that the~~
10 ~~winery imports into this state for blending with Arkansas produced wines for~~
11 ~~sale within the State of Arkansas. The Arkansas winery must pay a similiar~~
12 ~~credit against taxes for wines it sells within the State of Arkansas produced~~
13 ~~from fruits and vegetables grown outside the State of Arkansas.~~

14 ~~(c)(1) To qualify for the benefits of the tax credit incentive as~~
15 ~~provided in subsections (a) and (b) of this section, the Arkansas winery~~
16 ~~shall submit to the Department of Finance and Administration copies of~~
17 ~~invoices of sales of Arkansas grown wines to wholesalers in other states or~~
18 ~~countries indicating the date of sale and address of the wholesaler.~~

19 ~~(2) If certain wines on the invoice are blends of Arkansas grown~~
20 ~~and out-of-state grown wines, or blends with wines produced in Arkansas from~~
21 ~~out-of-state fruit, a copy of the blend ratio record shall accompany the~~
22 ~~invoice.~~

23 ~~(3) Invoices may be submitted annually.~~

24 ~~(d) Nothing in this subchapter shall be construed to require Arkansas~~
25 ~~wineries to pay gallonage tax in Arkansas on wines shipped and sold to~~
26 ~~wholesalers for sale outside of Arkansas.~~

27 ~~(e) All persons manufacturing controlled beverages shall keep and~~
28 ~~maintain on the premises the following records:~~

29 ~~(1) A record showing the kind, quantity, and date of the receipt~~
30 ~~of all materials brought upon the premises for use in the manufacture of~~
31 ~~controlled beverages;~~

32 ~~(2) A record of all controlled beverages sold or otherwise~~
33 ~~disposed of, indicating the date of sale or other disposition, the name of~~
34 ~~the wholesale or retail outlet purchaser, and the quantity of controlled~~
35 ~~beverages sold or otherwise disposed of.~~

36 ~~(f) The records shall be preserved for a period of three (3) years~~

~~from the relevant date of the records and shall be available on the premises at all times for reasonable inspection by authorized agents of the Alcoholic Beverage Control Division and the Department of Finance and Administration. The records, along with federal Bureau of Alcohol, Tobacco, and Firearms production and sales records and other requirements of this subchapter, shall serve as a system to ensure proper collection of wine taxes.~~

SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that lawsuits are currently pending in both Federal Court for the Eastern District of Arkansas and Pulaski County Circuit Court regarding the constitutionality of the laws being amended by this subchapter; that the lawsuits are being defended by the office of the Arkansas Attorney General; and that immediate implementation of this act is necessary because any delay may result in substantial costs to the state. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/ Wells

APPROVED: 3/29/2007