

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.

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

# A Bill

SENATE BILL 304

4  
5 By: Senators T. Smith, Horn, Salmon  
6 By: Representatives Wood, Sample, Harrelson, Saunders

## For An Act To Be Entitled

7  
8  
9  
10 AN ACT TO TREAT NATIVE WINE MANUFACTURERS EQUALLY  
11 WITH OTHER MANUFACTURERS; TO PROTECT THE STATE'S  
12 TRADITIONAL THREE-TIER SYSTEM FOR THE CONTROL OF  
13 ALCOHOLIC BEVERAGES; AND FOR OTHER PURPOSES.

## Subtitle

14  
15  
16 AN ACT TO TREAT NATIVE WINE  
17 MANUFACTURERS EQUALLY WITH OTHER  
18 MANUFACTURERS AND TO PROTECT THE STATE'S  
19 TRADITIONAL THREE-TIER SYSTEM FOR THE  
20 CONTROL OF ALCOHOLIC BEVERAGES.

21  
22  
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

### SECTION 1. Intent.

24  
25  
26 (a) The General Assembly intends this subchapter to amend Arkansas law  
27 that controls the distribution and sale of alcoholic beverages to comply with  
28 the recent ruling of the United States Supreme Court in the case of Granholm

# ARGUMENTS AGAINST SB 304

SB 304's purpose is totally *to protect* the 3-tier system at the expense of Arkansas wineries. There is no sense of equal treatment for wineries, no matter what angle it is viewed from. Almost all wineries in the rest of the United States are allowed to wholesale, retail, and ship from their manufacturing premises. SB 304 proposes to deny these privileges to Arkansas wineries, putting them at a significant disadvantage compared to wineries outside this state.

The traditional 3-tier system referred to here has never included Arkansas wineries. Granholm does not mandate a 3-tier system. Many states do not mandate a 3-tier system. But economically, there will always be a 3-step system of manufacturer, wholesaler, and retailer for all types of manufactured products, including alcoholic beverages. Mandating its usage for alcoholic beverages has brought on unconstitutional barriers to free trade between states, against manufacturers, and against consumers. And through it all, wholesalers profit.

In a letter to Senator Dan Cronin, of Illinois regarding the "Illinois Wine and Spirits Industry Fair Dealing Act of 1999", C. Steven Baker, Director of Chicago Regional Office of the Federal Trade Commission stated, "We have seen no evidence suggesting that wine and liquor wholesalers are different from wholesalers in other industries, thus requiring special treatment under state commercial law. These wholesalers provide storage and distribution services that are typical for wholesalers, especially in the food and beverage industries. Nor have we seen anything to indicate that competition is unworkable in the wine and liquor industries or that state policy governing alcohol distribution would require such legislation."

29 v. Heald, 544 U.S. 460 (2005).

30 (b) The purposes of this subchapter are to:

31 (1) Ensure equal treatment of all affected businesses under the  
32 law;

33 (2) Maintain a comprehensive system of regulation and control of  
34 the distribution and sale of alcoholic beverages in the state;

35 (3) Ensure that all alcoholic beverages are sold to Arkansas  
36 consumers by licensed retailers through face-to-face sales transactions;

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1 (4) Ensure the continuation of a system that fosters the prompt  
2 and efficient collection and payment of all wholesale and retail alcoholic  
3 beverage taxes due the state;

There have been no consultations with Arkansas wineries, nor has any research been presented, to make a factual finding that there will be equal treatment of all affected businesses. The affected businesses have yet to even be identified. A glaring omission here is a concern for the fair and equal treatment of consumers. Arkansas consumers under SB 304 will no longer be able to have wine shipped to them, nor will they be able to buy Arkansas wine at the winery without middleman costs added to the price. Small wineries will have difficulty to get wholesalers and retailers to make room for their small volumes of wines offered, and in all likelihood, consumers will have no means of buying Arkansas wines.

The Native Wine Law within the Arkansas Code of regulation and control has been effectively operating for a long time. Rescinding the rights and privileges of Arkansas wineries as SB 304 would do, is not necessary or justified and is not demanded under Granholm. SB 304 is a mean-spirited attempt to make all sales, and the resulting middleman fees, go to wholesalers at the expense of the wineries, its employees, suppliers, and the consumers and tourists that they accommodate.

- ◆ “Face-to-face” requirements have routinely been struck down by the courts as unconstitutional.
- ◆ Retail sales at wineries are no less face-to-face than sales at a typical liquor retail store.
- ◆ A delivery driver trained in proper delivery of alcoholic beverages, who requires a signature from the person receiving the delivery, is certainly a face-to-face situation. And, in fact, the requirement of a signature is way more than any minimum wage store clerk is required to do to complete a sale.

(A) Very misleading and insinuates that only in-state wholesalers can be depended upon to pay taxes due. The truth is that Arkansas wineries have been paying taxes on the wine they sell for a long time, just like the wholesalers and retailers. The wineries are not any less capable or dependable. With regard to out of state wineries shipping wine into Arkansas, there is plenty of support from the U.S. Supreme Court and the Federal Trade Commission to debunk the idea that taxes will be lost.

(B) U.S. Supreme Court Granholm v. Heald, Justice Kennedy writes:

- ◆ “the States provide little concrete evidence for the sweeping assertion that they cannot police direct shipments by out-of-state wineries”
- ◆ State “could protect itself against lost tax revenue by requiring a permit as a condition of direct shipping”

4                   (5) Preserve our system of laws that prohibit the unauthorized  
5 and unlawful sale of alcoholic beverages in dry counties; and

6                   (6) Ensure that Arkansas' native wine manufacturers are treated  
7 equally with out-of-state wine manufacturers.

9                   SECTION 2. Arkansas Code § 3-1-103(a)(1), concerning alcoholic  
10 products exempted from the Arkansas Alcoholic Control Act, is amended to read  
11 as follows:

- ◆ “The Tax and Trade Bureau (formerly the Bureau of Alcohol, Tobacco, and Firearms) has authority to revoke a winery’s federal license if it violates state law” and “the Twenty-first Amendment Enforcement Act gives state attorneys general the power to sue wineries in federal court to enjoin violations of state law.”
- ◆ “In summary, the States provide little concrete evidence for the sweeping assertion that they cannot police direct shipments by out-of-state wineries.”

(C) Federal Trade Commission Release of Results of Empirical Analysis of Direct Shipping, July, 2003:

- ◆ “By requiring out-of-state suppliers to obtain permits, states have sought to achieve voluntary compliance with their tax laws. Most of these states report few, if any, problems with tax collection. Other states with reciprocity agreements forgo taxing interstate direct shipments altogether.”

- ◆ This apparently is directed at people who wish to have wine shipped to them. Current law allows residents of Arkansas, regardless of whether they live in a wet or dry county, to possess alcohol that they have bought and transported themselves over the road. Contrary to what SB 304 promotes, it is safer and more efficient to have the beverage delivered to a consumer’s residence rather than have the consumer travel long distances to obtain it, particularly the elderly.

- ◆ Under SB 304, achievement of equality is by 100% denial of privileges to Arkansas wineries, while the wholesalers have a lucrative market by making all wine flow through their warehouses.
- ◆ Equality demanded by Granholm v. Heald does not mandate a 3-tier system. It merely says that privileges be granted in the same manner to all wineries.
- ◆ Using Granholm v. Heald in this manner would deprive Arkansas residents of fair and competitive pricing, and the ability to acquire goods not otherwise obtainable. The elimination of unfair trade barriers is what Granholm is all about.
- ◆ SB 304 is not an acceptable means of gaining equality.

12 (a)(1) ~~The~~ Except as expressly provided, the provisions of this act  
13 shall not in any manner be construed to apply to the manufacture, sale, and  
14 distribution of wines or vinous liquors manufactured, sold, and distributed  
15 by residents of Arkansas.  
16

17 SECTION 3. Arkansas Code § 3-2-403 is amended to read as follows:

18 3-2-403. Spirituous and vinous beverages - Registration of brands and  
19 labels - Designation of licensed wholesaler.

20 (a) Every manufacturer, importer, or producer of spirituous and vinous  
21 beverages, as defined by § 3-1-102, including wine manufactured in Arkansas,  
22 doing business in the State of Arkansas shall submit to the Alcoholic  
23 Beverage Control Division one (1) label for each brand of spirituous and  
24 vinous beverages to be shipped for the first time by the shipper into or  
25 within the state and shall designate in the application for registration one  
26 (1) licensed liquor wholesaler in the state, who shall be the exclusive  
27 distributor of such brand or label within the state.

28 (b) ~~Such~~ The designated wholesaler shall be initially approved by the  
29 director and shall not be changed or initially disapproved except for good  
30 cause, and the director shall determine good cause after a hearing pursuant  
31 to the provisions set out in this subchapter.

32

- ◆ SB 304 inserts the phrase 'except as expressly provided', then follows with repeated insertions of phrases like 'including wine manufactured in Arkansas' and 'this section applies to wine manufactured in Arkansas'.
- ◆ The first chapter of the Alcoholic Beverage Control Act specifically states that the act does not apply to wine manufactured in Arkansas. Arkansas wineries and the wines they produce have been regulated by another section of the code for 72 years. Both sections of the code have evolved into comprehensive systems of regulation and control of different segments of the beverage industry. Rewriting the Alcoholic Beverage Control Act, and in effect, abolishing the native wine law as put forth by SB 304, cannot work for Arkansas wineries.

- ◆ "indentured servant" clause.
- ◆ The meaning of "good cause" too subjective.
- ◆ These regulations are too restrictive for small wineries. Since 1980, the number of wineries in the United States has grown from 919 to nearly 4,000 in 2006. Most of these are small wineries that add and remove wine types and identities as the business evolves. Many specialty wines, novelty wines, and unique fruit and varietal wines are on again off again items and cannot justifiably be mandated like national brand names.
- ◆ Absolutely no incentive to force a wholesaler to promote and market a product, and in fact, this gives the ability to control and limit one brand, while heavily marketing another.

(c) Any brands or labels previously registered in this state, and  
33 which ~~that~~ have subsequently been withdrawn from distribution in this state,  
34 shall be treated in the same manner as the initial registration of brands or  
35 labels and are subject to the provisions ~~hereof~~ of this subchapter.  
36

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1 SECTION 4. Arkansas Code § 3-2-411 is amended to read as follows:

2 3-2-411. Subchapter incorporated into division approvals -

3 Applicability - Waiver.

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

12 ~~(b) This subchapter does not apply to manufacturers or wholesalers of~~  
13 ~~Arkansas native wine.~~

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

18

19 SECTION 5. Arkansas Code § 3-3-212, concerning relations between

- ◆ Guarantees a brand monopoly that has no visible end date within the code.
- ◆ Wholesalers typically carry the major brands of large wineries. This section effectively blocks any of these wineries from being able to change wholesalers in Arkansas in the future, even if in-state shipping, wholesaling, and retailing privileges are extended to out-of-state wineries. The wholesalers are in control of the brands they are carrying, and the statutes do not place a limitation on how long they can retain this control.

- ◆ This subchapter, and others in which this phrase is being struck by SB 304, was originally written with the express intent that the subchapters in which it was inserted would not apply to Arkansas manufactured wines. Current statutes repeatedly state, "This subchapter does not apply to manufacturers or wholesalers of Arkansas native wine." It is ill advised and dangerous to the local industry to make sweeping changes to place them under regulations that were never meant for them, without thorough research into the effects on them and all other industries that are connected in some way.

20 manufacturers and sellers of alcoholic beverages, is amended to add an  
21 additional subsection to read as follows:

22 (d) This section applies to wine manufactured in Arkansas.

23  
24 SECTION 6. Arkansas Code § 3-4-101 is amended to read as follows:  
25 3-4-101. Permit required.

26 (a) No vinous ~~(except wines)~~, spirituous, or malt liquors shall be  
27 manufactured in this state for storage or sale at retail within the state  
28 without a permit therefor issued by the Director of the Alcoholic Beverage  
29 Control Division as ~~herein~~ provided in this section.

30 (b) No person shall sell vinous, spirituous, or malt liquors in this  
31 state, except as provided in this act. ~~However, the provisions of this act~~  
32 ~~shall not apply to the manufacture, sale, and distribution of wines in this~~  
33 ~~state.~~

34 (c) This section applies to wine manufactured in Arkansas.

35  
36 SECTION 7. Arkansas Code § 3-5-407 is amended to read as follows:

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1 3-5-407. License fees generally.  
2 For the privilege of doing business respectively, as indicated in this  
3 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 native wine in  
6 quantities not to exceed five thousand (5,000) gallons, a license fee of one  
7 dollar (\$1.00) per thousand gallons shall be paid by the manufacturer.

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

13 (ii) Provided, nothing ~~herein~~ in this section shall  
14 be deemed to authorize the manufacture of wine or light wine in any area  
15 which has voted against the manufacture or sale of intoxicating liquors;

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

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

22 ~~(4) For the privilege of selling native wine, except by a~~  
23 ~~manufacturer at his winery, there shall be paid for each wholesale dealer's~~  
24 ~~license a fee of fifty dollars (\$50.00).~~  
25

- ◆ Before SB 304 changes, this was primarily a grocery store license that did not apply to wineries.
- ◆ After SB 304 changes, this is a winery license to sell by the drink and does not apply to any other retail outlets. This is trickery in its finest form.
- ◆ This provision of SB 304 will likely bring the demise of the Arkansas wine industry. It removes the largest and most profitable portion of their retail market, both at the winery and in retail stores.
- ◆ If this provision of SB 304 goes into effect, wineries will no longer be able to sell by the package at the winery, nor will they be able to sell at wholesale to grocery stores, convenience stores, restaurants, etc.
- ◆ Tourism in Arkansas will take a tremendous hit if SB 304 is approved. The wineries are a major tourist attraction, and have recently seen a surge in visitors because of the newly built Arkansas Parks and Tourism Lodge at Mount Magazine.

- ◆ By striking this permit, SB 304 is abolishing the right of beer wholesalers to sell any wines. Granholm does not mandate that a state cannot have wholesalers that only sell beer and wine. Here again is a pre-emptive strike against small business. Arkansas has several small beer distributors who also carry some Arkansas wines. Their only alternative under SB 304 is to get a full-fledged liquor permit or quit selling wine. In either case, the small business loses out.
- ◆ Of note here, is that the large wholesalers are using SB 304 to eliminate competition from within their own ranks.

26 SECTION 8. Arkansas Code § 3-5-409(a), concerning taxes on the  
27 manufacture and sale of native wines, is amended to read as follows:

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

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

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1 in this state under the provisions of this subchapter.

2

3 SECTION 9. Arkansas Code § 3-5-410 is amended to read as follows:

4 3-5-410. Manner of sale.

5 All native wine, whether sold by the ~~manufacturer,~~ retailer, or

6 wholesale dealer, ~~must~~ shall be sold in original packages and in the

7 following lots:

8 (1) ~~The manufacturer may sell to the consumer at the winery in~~

- ◆ Removal of the phrase “and sold” drastically changes the meaning. There are no provisions for spoiled wine, wine sold as vinegar, etc.
- ◆ Bond to bond transfers of wine are not considered sales for purposes of excise tax. However, with the change from wine manufactured and sold, to just wine manufactured, there is an implication that bond-to-bond sales would be taxed. This would eventually lead to double taxation.
- ◆ The term “for consumption” is unclear. Common industry usage generally means ‘by the glass’ for immediate consumption. In the context of excise taxes, this would infer that only wine sold by the glass would have the excise tax on it.

~~9 — lots not to exceed five (5) gallons and to either wholesale or retail dealers  
10 — in lots not less than five (5) gallons. However, the lots may be contained in  
11 — packages of less than five (5) gallons each;~~

~~12                   (2)(1) Retail dealers may sell only to consumers and in lots not  
13 to exceed five (5) gallons; and~~

~~14                   (3)(2) Wholesale dealers may sell only to retail dealers and in  
15 lots of any quantity.~~

16  
17           SECTION 10. Arkansas Code § 3-5-411 is amended to read as follows:

18           3-5-411. Transportation.

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

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

~~23           (c)(1) It is lawful for any winery in the State of Arkansas to ship  
24 — wines out of the state by common carrier or other appropriate parcel delivery  
25 — service and for common carriers and other appropriate parcel delivery  
26 — services to accept wine from Arkansas wineries for delivery outside the State  
27 — of Arkansas.~~

~~28                   (2)(A) An individual who purchases native Arkansas wine at the  
29 — winery may transport the wine pursuant to § 3-5-504 or may have the purchase  
30 — shipped to him or her at the individual's home by common carrier or  
31 — appropriate parcel delivery service.~~

~~32                   (B) Under subdivision (c)(2)(A) of this section, it is  
33 — lawful for:~~

~~34                   (i) Any winery in the State of Arkansas to ship  
35 — wines within the state by common carrier or other appropriate parcel delivery  
36 — service; and~~

Sections 9 – 14. Almost total removal of the code in these sections

- ◆ These sections, and other parts in previous sections, that are intended to be abolished by SB 304, contain an extensive amount of Arkansas code regulating the manufacture, sale, transportation, licensing, taxation, and enforcement procedures with regard to Arkansas wines.
- ◆ The future ramifications of such actions have not been determined. No Arkansas wineries have been consulted to determine how they will be affected.
- ◆ SB 304 is a vicious attack on Arkansas wineries that is without merit.

SB 304 will take away the current right of a consumer to have wine shipped to him. In July, 2003, the Federal Trade Commission released the results of an empirical analysis of direct shipping. Among the findings noted were:

- ◆ “The FTC’s staff received more public comments and complaints about e-commerce barriers in wine than in any other industry.”
- ◆ “Consumers can purchase many wines online that are not available in nearby bricks-and-mortar stores.”
- ◆ “...by banning interstate direct shipments, states limit consumer’s access to thousands of labels from smaller wineries.”
- ◆ “State bans on interstate direct shipping represent the single largest regulatory barrier to expanded e-commerce in wine.”

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

4  
5 SECTION 11. Arkansas Code § 5-4-413 is amended to read as follows:

6 3-5-413. Wineries — Sale of wine for on-premises ~~or off-premises~~  
7 consumption.

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

11 (b)(1) The Alcohol Beverage Control Board ~~is hereby authorized to~~ may  
12 promulgate reasonable rules ~~and regulations~~ for the on-premises sale with of  
13 foods, and off-premises package sale, labeling, and identification, of and  
14 wine sold at wine outlets maintained on the premises and operated in  
15 connection with a wine manufacturing facility in this state throughout the  
16 week.

17 (2) ~~and such regulations~~ The rules shall include the following  
18 ~~minimum requirements:~~

19 (1) ~~The winery shall provide~~ ensure that the winery  
20 provides tours through ~~their~~ its cellars.

21 (2) ~~Only sealed containers may be removed from the winery~~  
22 ~~premises;~~

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

27 ~~\_\_\_\_\_ (B) Said tape or seal shall be affixed in such manner as~~  
28 ~~directed by the Alcoholic Beverage Control Board which shall prohibit the~~  
29 ~~opening thereof without breaking such tape or seal.~~

30 ~~\_\_\_\_\_ (C) On each such package shall be stamped in ink the words~~  
31 ~~"Not to be opened on date of sale by order of the Arkansas Alcoholic Beverage~~  
32 ~~Control Board" and stating the penalty for violating such order in letters of~~  
33 ~~such minimum height and size as may be prescribed by the Alcoholic Beverage~~  
34 ~~Control Board.~~

35 ~~\_\_\_\_\_ (c) Breaking the seal required by subdivision (b)(3) of this section~~  
36 ~~on the date of sale shall be a Class C misdemeanor.~~

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1  
2 SECTION 12. Arkansas Code Title 3, Chapter 5, Subchapter 5 is  
3 repealed.

4 ~~3-5-501. Legislative determinations and intent.~~

5 ~~\_\_\_\_\_ (a) The General Assembly, in the passage of this subchapter, is~~  
6 ~~cognizant of the practice of Arkansas wineries who produce native wine in~~  
7 ~~cooperating with the efforts of the State Parks, Recreation, and Travel~~  
8 ~~Commission in promoting the tourist industry of this state by opening their~~  
9 ~~cellars and vineyards to tourists, by providing official tour guides, and by~~  
10 ~~expending sums of money for the construction of vineyard observation towers,~~  
11 ~~vineyard roads, tourist centers, and tunnels for the proper flow of travel~~  
12 ~~through their wine cellars, and that these activities by Arkansas wineries~~  
13 ~~who produce native wine have promoted the tourist industry in Arkansas, and~~  
14 ~~are of substantial benefit in promoting the economy and welfare of this~~  
15 ~~state.~~

16 ~~\_\_\_\_\_ (b) The General Assembly further recognizes that quantities of native~~  
17 ~~wines are sold at the wineries in this state to connoisseurs of vintage wines~~  
18 ~~who purchase the native wines to stock their home wine cellars, but in the~~  
19 ~~transportation of such wines, persons may often find themselves in technical~~  
20 ~~violation of the laws of this state by transporting greater quantities of~~  
21 ~~native wine through dry counties than are authorized by law.~~

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

30 ~~\_\_\_\_\_ (d) The General Assembly further determines that the procedures set~~  
31 ~~forth hereinafter provide reasonable regulations for the lawful~~  
32 ~~transportation of native wines upon the public highways of this state which,~~  
33 ~~if transported in compliance herewith, shall not be in violation of state law~~  
34 ~~or of any local initiated act prohibiting or restricting the manufacture,~~  
35 ~~possession, or sale of alcoholic beverages in this state.~~

36 ~~\_\_\_\_\_ (e) It is the intent of this subchapter to establish regulated~~

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1 ~~procedures for transportation of native wine on the public highways of this~~  
2 ~~state which are purchased by the purchaser in the manner provided in this~~  
3 ~~subchapter for transportation to a destination outside the State of Arkansas~~

4 ~~or to a destination within the state in which the lawful manufacture,~~  
5 ~~possession, or sale of alcoholic beverages is prohibited.~~

6

7 ~~3-5-502. Penalty.~~

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

10

11 ~~3-5-503. Labeling for transportation.~~

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

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

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

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

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

34 ~~Alcoholic Beverage Control Board;~~  
35 ~~(3)(A) In addition thereto, the case shall have stamped or~~  
36 ~~printed on it substantially the following form:~~

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1

2 ~~ARKANSAS NATIVE WINE TRANSIT PERMIT~~

3

4 ~~This package contains Arkansas Native Wine produced by:~~

5

6 ~~....., and sold to~~

7

8 ~~(Name and Address of Winery)~~

9

10 ~~.....~~

11

12 ~~(Name of Purchaser) ..... (Address)~~

13

14 ~~On ....., for transit to~~

15

16 ~~(Date of Sale)~~

17

18 ~~.....~~

19 ~~(Name and Address of Destination)~~

20 ~~(B) Each case or partial case of native wine shall be~~

21 ~~stamped in the manner as provided in this section, and there shall be written~~

~~22 on each case or partial case the information required in this section.~~

~~23~~

~~24 3-5-504. Transportation by purchaser authorized - Limitation.~~

~~25 (a) Any person who shall purchase native wine at retail outlets  
26 maintained on the premises of, and operated by, the native wine manufacturer  
27 may transport a quantity of not more than three (3) cases, not to exceed  
28 three (3) gallons per case, of Arkansas-produced native wine. If the cases  
29 are packaged, sealed, and stamped in the manner as provided in § 3-5-503,  
30 they may be transported upon the public highways of this state without the  
31 transportation of them being in violation of any laws of this state or of any  
32 local ordinances prohibiting the manufacture, possession, or sale of  
33 alcoholic beverages in any dry area through which they are transported on the  
34 public highway. This is true so long as the container has been unopened and  
35 is being transported by a vehicle to a destination, as reflected on the  
36 package, outside the State of Arkansas or to a destination within the State~~

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~~1 of Arkansas in which the manufacture, possession, or sale of alcoholic  
2 beverages is not prohibited by law.~~

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

~~8 (c) Nothing in this subchapter shall be construed to limit the  
9 transportation of three (3) cases per vehicle.~~

~~10 (d) Nothing in this subchapter shall be construed to grant permission~~

11 ~~or authority for any person to transport an unlawful quantity of native wine~~  
12 ~~to a destination in, or for possession, sale, or use in, any county, city, or~~  
13 ~~portion thereof in which the manufacture, possession, or sale of alcoholic~~  
14 ~~beverages is prohibited by law.~~

15

16 ~~3-5-505. Package to remain unopened— Inspection.~~

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

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

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

32

33 SECTION 13. Arkansas Code § 3-5-603(a), concerning bottling and taxing  
34 native wines, is amended to read as follows:

35 (a) In order to enable Arkansas wineries ~~which~~ that produce native  
36 wines to ~~sell their products to~~ make their products usable by interstate and

1 intrastate passenger airline companies and ~~to~~ passenger railroads in  
2 containers for their convenience and use, the Alcoholic Beverage Control  
3 Board ~~is authorized to~~ may promulgate regulations rules to permit the  
4 bottling of wines produced by wineries in this state in two-fifths (2/5) pint  
5 or split size wine containers, or other nearest metric size practicable when  
6 the metric system of measurement is phased into operation in this country,  
7 ~~for sale to~~ for use by airlines and passenger railroads for sale for  
8 consumption ~~thereon~~ on airlines and passenger railroads.

9  
10 SECTION 14. Arkansas Code § 3-5-607 is repealed  
11 ~~3-5-607. Tax incentive for export of local wines.~~  
12 ~~(a) In order to encourage Arkansas wineries to seek new and broader~~  
13 ~~markets for Arkansas wines outside of Arkansas and to enable the wineries to~~  
14 ~~be less dependent upon Arkansas markets for the sale of their wines, thereby~~  
15 ~~giving an incentive for the purchase of more Arkansas fruits and vegetables~~  
16 ~~to be used in the production of wines for sale outside this state, the~~  
17 ~~General Assembly determines that the establishment of a tax incentive is~~  
18 ~~necessary to accomplish this purpose.~~  
19 ~~(b) The tax incentive shall be as follows: For every one and one-half~~  
20 ~~(11/2) gallons of Arkansas grown wine that an Arkansas winery sells and ships~~  
21 ~~outside the State of Arkansas, the Arkansas winery shall receive a seventy~~  
22 ~~cent tax credit against tax it must pay for out of state wines that the~~  
23 ~~winery imports into this state for blending with Arkansas produced wines for~~  
24 ~~sale within the State of Arkansas. The Arkansas winery must pay a similar~~  
25 ~~credit against taxes for wines it sells within the State of Arkansas produced~~  
26 ~~from fruits and vegetables grown outside the State of Arkansas.~~  
27 ~~(c)(1) To qualify for the benefits of the tax credit incentive as~~  
28 ~~provided in subsections (a) and (b) of this section, the Arkansas winery~~  
29 ~~shall submit to the Department of Finance and Administration copies of~~

~~30 — invoices of sales of Arkansas-grown wines to wholesalers in other states or  
31 — countries indicating the date of sale and address of the wholesaler.  
32 ————— (2) If certain wines on the invoice are blends of Arkansas-grown  
33 — and out-of-state grown wines, or blends with wines produced in Arkansas from  
34 — out-of-state fruit, a copy of the blend-ratio record shall accompany the  
35 — invoice.  
36 ————— (3) Invoices may be submitted annually.~~

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~~1 (d) Nothing in this subchapter shall be construed to require Arkansas  
2 — wineries to pay gallonage tax in Arkansas on wines shipped and sold to  
3 — wholesalers for sale outside of Arkansas.  
4 ————— (e) All persons manufacturing controlled beverages shall keep and  
5 — maintain on the premises the following records:  
6 ————— (1) A record showing the kind, quantity, and date of the receipt  
7 — of all materials brought upon the premises for use in the manufacture of  
8 — controlled beverages;  
9 ————— (2) A record of all controlled beverages sold or otherwise  
10 — disposed of, indicating the date of sale or other disposition, the name of  
11 — the wholesale or retail outlet purchaser, and the quantity of controlled  
12 — beverages sold or otherwise disposed of.  
13 ————— (f) The records shall be preserved for a period of three (3) years  
14 — from the relevant date of the records and shall be available on the premises  
15 — at all times for reasonable inspection by authorized agents of the Alcoholic  
16 — Beverage Control Division and the Department of Finance and Administration.  
17 — The records, along with federal Bureau of Alcohol, Tobacco, and Firearms  
18 — production and sales records and other requirements of this subchapter, shall~~

19 ~~serve as a system to ensure proper collection of wine taxes.~~

20

21 SECTION 15. EMERGENCY CLAUSE. It is found and determined by the  
22 General Assembly of the State of Arkansas that lawsuits are currently pending  
23 in both Federal Court for the Eastern District of Arkansas and Pulaski County  
24 Circuit Court regarding the constitutionality of the laws being amended by  
25 this subchapter; that the lawsuits are being defended by the office of the  
26 Arkansas Attorney General; and that immediate implementation of this act is  
27 necessary because any delay may result in substantial costs to the state.  
28 Therefore, an emergency is declared to exist and this act being necessary for  
29 the preservation of the public peace, health, and safety shall become  
30 effective on:

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

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

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