

1 State of Arkansas *As Engrossed: H3/9/17 S3/22/17*

2 91st General Assembly

A Bill

3 Regular Session, 2017

HOUSE BILL 2092

4

5 By: Representative Capp

6 *By: Senator G. Stubblefield*

7

8

For An Act To Be Entitled

9

AN ACT TO AMEND ACTS 2017, NO. 313; AND FOR OTHER
10 PURPOSES.

11

12

13

Subtitle

14

TO AMEND ACTS 2017, NO. 313.

15

16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18

19 *SECTION 1. Acts 2017, No 313, § 3, is amended to read as follows:*

20 *SECTION 3. Arkansas Code Title 3, Chapter 5, Subchapter 17, is amended*
21 *to add additional sections to read as follows:*

22 *3-5-1709. Small farm winery shipment.*

23 *(a)(1) A small farm winery licensee with a wine wholesale permit under*
24 *§ 3-5-1602(c)(1)(E) may ship small farm winery wine under this subchapter to*
25 *a private resident without the private resident having been physically*
26 *present or having made an in-person purchase at the small farm winery if the*
27 *shipment includes only small farm winery wine.*

28 *(2) Additional shipping registration of a small farm winery is*
29 *not required for a shipment under subdivision (a)(1) of this section.*

30 *(b) A private resident shall provide identification to the small farm*
31 *winery proving that he or she is twenty-one (21) years of age or older.*

32 *(c) A small farm winery may ship only one (1) case of small farm*
33 *winery wine per private resident in any month.*

34 *(d) A small farm winery shipping under this subchapter shall ensure*
35 *that all containers of small farm winery wine delivered within this state are*
36 *conspicuously labeled as follows:*



1 "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR
2 DELIVERY".

3 (e)(1) A small farm winery shall collect all sales taxes and excise
4 taxes due on a sale to an individual of this state as if the sale took place
5 on the premises of the small farm winery, including without limitation taxes
6 under §§ 3-5-1605, 3-7-104, 3-7-111, and 3-7-201.

7 (2) Taxes collected by the small farm winery shall be submitted
8 to the Department of Finance and Administration as directed without
9 limitation under §§ 3-5-1605, 3-7-104, 3-7-111, and 3-7-201.

10 (3) A small farm winery shall source the collection of sales and
11 use taxes to the purchaser's delivery address in accordance with § 26-52-
12 521(b)(2).

13 (f) A small farm winery that makes a direct shipment of small farm
14 winery wine under this section shall maintain records regarding each shipment
15 of small farm winery wine that include the:

16 (1) Name and address of the person to whom the small farm winery
17 wine is:

18 (A) Sold; and

19 (B) Billed; and

20 (2) Date of shipment.

21
22 3-5-1710. Permits - Drawing - Issuance.

23 (a)(1) Within sixty (60) days after the effective date of this act,
24 the Alcoholic Beverage Control Board shall ~~issue thirty (30) small farm~~
25 ~~winery private resident shipping permits to ship small farm winery wine under~~
26 § 3-5-1709 notify by mail all small farm wineries licensed under § 3-5-1602
27 and holding a small farm wine wholesale permit under § 3-5-1602(c)(1)(E)
28 issued on or before April 15, 2017, that they are eligible for a small farm
29 winery private-resident shipping permit if the winery produced by
30 fermentation at least eight hundred gallons (800 gals.) of wine in the
31 previous calendar year as shown on the winery's TTB F 5120-17.

32 ~~(2) In each subsequent year, the board may issue up to five (5)~~
33 ~~small farm winery private resident shipping permits to ship small farm winery~~
34 ~~wine as provided in this section~~ The board shall issue a small farm winery
35 private-resident shipping permit to a small farm winery holding a small farm
36 wine wholesale permit under § 3-5-1602(c)(1)(E) issued on or before April 15,

1 2017, upon receipt of the following:

2 (A) Proof that the winery produced by fermentation at
3 least eight hundred gallons (800 gals.) of wine in the previous calendar year
4 as shown on the winery's TTB F 5120-17; and

5 (B) Payment of a licensing fee of twenty-five dollars
6 (\$25.00).

7 ~~(b)(1) The Alcoholic Beverage Control Division shall notify the public~~
8 ~~at large by public notice that a drawing shall be held in Little Rock,~~
9 ~~Arkansas, to determine which of the small farm winery licensees holding a~~
10 ~~wine wholesale permit are eligible to receive a small farm winery private-~~
11 ~~resident shipping permit under this section In each subsequent year, the~~
12 ~~board may issue up to five (5) small farm winery private-resident shipping~~
13 ~~permits to small farm wineries licensed under § 3-5-1602 and holding a small~~
14 ~~farm wine wholesale permit under § 3-5-1602(c)(1)(E) issued after April 15,~~
15 ~~2017, if the winery produced by fermentation at least eight hundred gallons~~
16 ~~(800 gals.) of wine in the previous calendar year as shown on the winery's~~
17 ~~TTB F 5120-17.~~

18 ~~(2) The public notice under subdivision (b)(1) of this section~~
19 ~~shall include without limitation:~~

20 ~~(A) Internet notification; and~~

21 ~~(B) Notice by mail to each licensee who holds both a small~~
22 ~~farm winery license and a wine wholesale permit under § 3-5-1602. The board~~
23 ~~shall notify the public at large by legal notice and internet posting that~~
24 ~~the board will accept applications for small farm winery private-resident~~
25 ~~shipping permits.~~

26 ~~(3) The notice required under subdivision (b)(2) of this section~~
27 ~~shall include:~~

28 ~~(A) The number of permits to be issued;~~

29 ~~(B) The last date applications will be accepted; and~~

30 ~~(C) The date of a drawing to determine which applicants~~
31 ~~will be awarded a permit if the number of applicants exceeds the number of~~
32 ~~permits authorized by the board.~~

33 ~~(4) The board shall not accept an application more than ninety~~
34 ~~(90) days after the date of publication of the notice required under~~
35 ~~subdivision (b)(2) of this section.~~

36 ~~(5)(A) If the number of applicants for a permit exceeds the~~

1 number of permits authorized by the board, the Director of the Alcoholic
2 Beverage Control Division shall conduct a drawing not earlier than one
3 hundred twenty (120) days after the publication of the notice specified in
4 subdivision (b)(2) of this section, nor later than one hundred eighty (180)
5 days after publication of the notice.

6 (B)(i) On the date of the drawing, each applicant for a
7 permit or his or her agent shall draw a number between one (1) and a number
8 equal to the number of permits to be granted of applications filed.

9 (ii) Position numbers shall not be transferred or
10 assigned.

11 (6) Upon payment of a licensing fee of twenty-five dollars
12 (\$25.00), the director shall issue a permit to each eligible licensee that
13 draws a number one (1) through the number authorized by the board for the
14 drawing.

15 ~~(c)(1)(A) No later than fifteen (15) days before the scheduled drawing~~
16 ~~for the small farm winery private resident shipping permit, a licensee~~
17 ~~holding both a small farm winery license and a wine wholesale permit who~~
18 ~~wishes to be entered into the drawing shall certify to the Alcoholic Beverage~~
19 ~~Control Division that the winery has produced by fermentation at least one~~
20 ~~thousand gallons (1,000 gals.) of wine in the previous calendar year by~~
21 ~~providing the winery's TTB F 5120-17.~~

22 ~~(B) A licensee that fails to submit proof of production by~~
23 ~~the date provided for in subdivision (c)(1)(A) of this section is not~~
24 ~~eligible for the drawing under this section.~~

25 ~~(2) On the date of the drawing, each licensee holding both a~~
26 ~~small farm winery license and wine wholesale permit who has met the~~
27 ~~requirements specified in subdivision (c)(1) of this section shall draw a~~
28 ~~number between one (1) and the number of eligible licensees.~~

29 ~~(3) The drawing shall be conducted by the Director of the~~
30 ~~Alcoholic Beverage Control Division.~~

31 ~~(4) The individual of record with the division designated as the~~
32 ~~permit holder for the eligible small farm winery shall be present for the~~
33 ~~drawing at the location chosen by the director to be awarded a small farm~~
34 ~~winery private resident shipping permit if selected by the drawing.~~

35 ~~(5) Position numbers may not be assigned or transferred.~~

36 ~~(d)(1) The director shall issue the small farm winery private resident~~

1 ~~shipping permits authorized through the drawing under this section to those~~
2 ~~eligible licensees drawing numbers one (1) through thirty (30) upon payment~~
3 ~~of a licensing fee of fifty dollars (\$50.00).~~

4 ~~(2) In a subsequent year, if the Alcoholic Beverage Control~~
5 ~~Board authorizes additional permits, the director shall issue permits~~
6 ~~authorized under this section to those eligible licensees drawing numbers one~~
7 ~~(1) through the number authorized by the board for the drawing upon payment~~
8 ~~of a licensing fee of fifty dollars (\$50.00).~~

9 ~~(e)(c) A small farm winery shall renew its small farm winery private-~~
10 ~~resident shipping permit each year with the division by paying a renewal fee~~
11 ~~of fifty dollars (\$50.00) twenty-five dollars (\$25.00).~~

12
13 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
14 General Assembly of the State of Arkansas that this act amends Acts 2017, No
15 313, § 3, that became effective March 2, 2017, as a result of an emergency
16 clause; Act 313 of 2017 requires immediate action by the Alcoholic Beverage
17 Control Board, the Director of the Alcoholic Beverage Control Division, and
18 small farm winery license holders; the language of this bill alters the
19 timelines imposed by Act 313 of 2017 and the procedure by which permits are
20 issued; without the immediate enactment of this act, confusion will exist as
21 to the procedures to be implemented for issuing permits under Act 313 of 2017
22 and unnecessary costs will be incurred to comply with Act 313 of 2017.
23 Therefore, an emergency is declared to exist, and this act being immediately
24 necessary for the preservation of the public peace, health, and safety shall
25 become effective on:

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

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

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

32
33 /s/Capp

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35 APPROVED: 04/03/2017