

Department of Finance and Administration

Legislative Impact Statement

Bill: SB284

Bill Subtitle: TO ESTABLISH A RETAIL OFF-PREMISES PERMIT FOR THE SALE OF WINE AT GROCERY STORES AND TO PROVIDE ADDITIONAL GRANT FUNDS TO SUPPORT ARKANSAS WINE PRODUCTION AND WINE TOURISM IN THE STATE.

Basic Change :

Sponsor: Senator Hester

SB284 amends § 3-5-1605(a)(4)(A) to modify the wholesale wine dealer license that currently allows a small farm winery to sell only "small farm wine" to also sell wine, light wine, or vinous liquor. Under current law, a small farm winery permit can be obtained by an Arkansas or out-of-state small farm winery. The yearly small farm winery wholesale dealer license fee is currently \$100.00. A small farm winery may obtain this license provided that the winery does not sell more than 250,000 gallons of wine per year. Arkansas generally operates under a three-tier system for the distribution of alcoholic beverages. That is, a producer must sell exclusively to a licensed wholesaler, and the wholesaler sells to retailers. In an exception to the three-tier system, a small farm winery licensee may sell at retail wine produced on the premises of the small farm winery or at a retail location if all sales occur in a wet territory. A small farm winery licensee may sell wine produced on the premises of a small farm winery to wholesale and retail license holders and other small farm license holders, provided that the small farm winery holds a wine wholesale permit. Under SB284, the holder of a small farm winery wholesale permit would also be able to sell wine, light wine, or vinous liquor.

SB284 also amends § 3-4-601 to create a Grocery Store Wine Permit to be issued by the Alcoholic Beverage Control Division to retail sellers of wine. A "grocery store" is defined in the bill as being a single physical establishment that has an inventory of human-consumable items. Annual permit fees would be based on the physical size of the retail establishment and would be established as follows:

- One thousand dollars (\$1,000) for a permitted building space containing less than thirty-five thousand and one square feet (35,001 sq. ft.);
- Two thousand five hundred dollars (\$2,500) for a permitted building space containing between thirty-five thousand and one square feet (35,001 sq. ft.) and fifty thousand square feet (50,000 sq. ft.);
- Three thousand five hundred dollars (\$3,500) for a permitted building space containing between fifty thousand and one square feet (50,001 sq. ft.) and seventy-five thousand square feet (75,000 sq. ft.); and
- Five thousand dollars (\$5,000) for a permitted building space containing more than seventy-five thousand square feet (75,000 sq. ft.).

Retailers seeking a grocery store wine permit may derive no more than twenty percent (20%) of its gross sales from the sale of alcoholic beverages unless, as of January 1, 2017, that grocery store derives more than twenty percent (20%) of its gross sales from the sale of alcoholic beverages. One hundred percent (100%) of the annual licensing fees would be paid into the Arkansas Wine Grants Fund with the monies distributed as follows:

- Fifty percent (50%) of the grant funds received under § 3-5-1802 would be divided among each grantee according to the same ratio as the wine taxes paid in the previous calendar year by the grantee as determined by the Chief Fiscal Officer of the State, not to exceed the amount paid in by each grantee.

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- Fifty percent (50%) of the grant funds received under § 3-5-1802 would be deposited into the Tourism Development Trust Fund of the Department of Parks and Tourism, § 19-5-956, for the purpose of operating and staffing a wine tourism facility and office space for the Arkansas Wine Producers' Council within the tourism facility in Franklin County, Arkansas.
- Any unused or undesignated grant funds at the end of the fiscal year shall be directed to the Department of Parks and Tourism.

The Department of Parks and Tourism in consultation with the Arkansas Wine Producers' Council would use funds to support wine tourism, marketing efforts, research to support Arkansas wineries, or the wine tourism facility.

Revenue Impact :

Permit fee revenues would be dependent on the number of permits issued with the fees per retailer based on physical size of the retail store. All revenues would be deposited to the Arkansas Wine Special Revenue Fund with fifty percent (50%) of the funds to be dispersed to each "grantee" based on the wine excise tax paid during the previous calendar year on wine and fifty percent (50%) to the Tourism Development Trust Fund of the Department of Parks and Tourism.

Taxpayer Impact :

Entities qualifying as a "Grocery Store" selling wine at retail would be required to register with the Alcoholic Beverage Control Division and obtain a new type of permit to sell wine. This permit would be renewed on an annual basis and the permit fee based on the square footage of the building space being operated.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

None.

Other Comments :

None.

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Legal Analysis :

SB284 modifies the existing distribution and sale of wine in the State of Arkansas. This bill creates a new permit under the Alcoholic Beverages Code that would authorize a grocery store to sell any wine or other vinous liquor such as vermouth and port. Under current law, liquor store permits held by grocery stores are limited to selling small farm winery production wines.

Significantly, SB284 makes a change to the wholesaler limitations in current law in Section 4 of the bill. By modifying the definitions of the small farm winery wholesale provisions to include "wine, small farm wine, light wine, or vinous liquor" the bill effectively nullifies other wine wholesale permits. This modification changes a small modestly-priced license to wholesale only small farm wine to an opportunity for anyone to become wholesalers of wine, small farm wine, light wine, or vinous liquor. There is concern regarding whether the Department and ABC would be able to confirm appropriate payments of the required alcohol excise tax under this proposed scheme. The license modified by Section 4 of the bill currently exists within a narrow exemption to the three-tier system of alcohol distribution, so it is available to stakeholders in both the manufacturing and retail tiers of distribution. There is also concern that the modified license may be used by those stakeholders to circumvent the existing three-tier distribution system for vinous liquor and light wine.

The bill provides that the Alcoholic Beverage Control Division will collect fees ranging from \$1,000.00 to \$5,000.00 for these grocery store permits. The bill specifies that all funds derived from permit fees will be directed into the "Arkansas Wine Grants Fund." 50% of the money received by the grant will be designated to the Tourism Development Trust Fund of the Department of Parks and Tourism. The bill provides that the other 50% of the license fees shall be divided among "grantees." The bill is not clear on which entities reporting wine excise taxes are to receive the distribution of the revenues resulting from the permit fees. There is no definition of "grantee" in Section 7, lines 17-21 which contains language that 50% of the funds received shall be divided among each grantee according to the same ratio as the wine taxes paid in the previous calendar year by the grantee as determined by the Chief Fiscal Officer of the State, not to exceed the amount paid in by each grantee. It appears that this section may be missing a reference or additional language, as it is unclear who the designated grantees are. The current excise tax on wine is reported by licensed wholesalers in Arkansas, in-state Arkansas wineries, and out-of-state wineries that are authorized to ship wine to Arkansas consumers. As drafted, each taxpayer within these types of business entities that report the wine taxes would receive a distribution from the permit fees with the largest portion of the funds being distributed to wine wholesalers who report the wine excise taxes on imported wines. If the intent is to provide grants to in-state Arkansas wineries only, the bill should be amended to provide for that distribution and clarify the intended grantees.

The bill provides a delay in counties that went wet between 2014 and 2017 which have an active retail permit so that no grocery store permits are to be issued until January 1, 2019 in those areas.