

Department of Finance and Administration

Legislative Impact Statement

Bill: SB1165

Bill Subtitle: TO PERMIT A SMALL FARM WINERY TO SHIP WINES DIRECTLY TO ARKANSAS RESIDENTS.

Basic Change :

Senators Holland, G. Stubblefield

The bill allows for the direct shipment of wine by a person who possesses a current small farm winery permit to an individual in this state. It limits the amount that can be shipped to the same individual in this state to no more than 12 nine-liter cases annually. It prohibits the shipments to an individual who is less than 21 years of age and requires the signature of the recipient upon delivery. The bill also provides that the winery would be required to collect all sales and excise taxes due on all shipments to Arkansas consumers as if the sale took place on the premises of an Arkansas Small Farm Winery. Arkansas taxes levied on wine include the wholesale gallonage tax of \$.75 per gallon, the wine case tax of \$.05 per case, the special retail beverage excise tax of 3% of the sales price and the state, city and county sales taxes.

Revenue Impact :

The bill should have no significant impact on tax revenues based on current production levels.

Taxpayer Impact :

No change in tax collection responsibilities.

Resources Required :

None

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

None

Other Comments :

The bill does not address whether sales are to be made in person or whether they can be made over the internet, telephone, or through the mail.

Page 2 --- Lines 25 through 28 ---The bill provides that the seller would collect the Arkansas taxes as if the sale took place on the premises of the winery. The language references the wholesale and special retail tax code provisions. If it is the intent of the bill for the collection of state, city and county sales taxes to be collected as if the sale took place at the winery even though the merchandise is shipped to another address in Arkansas, this would violate the Streamlined Sales and Use Tax Agreement. Arkansas law requires all sellers to collect city and county taxes based on where the merchandise is delivered or shipped. Violation of the Streamlined Agreement would risk current tax collections of approximately \$10 million annually. The bill should be amended to clarify that this language does not apply to state and local sales taxes.

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Legal Analysis :

SB1165 allows small farm wineries to ship wine to a person in Arkansas. The winery can ship no more than 12 nine-liter cases of wine annually to the same person. The winery cannot ship wine for resale, except as otherwise allowed by law. Certain packaging requirements apply, and a person age 21 or older must sign for delivery. The signature must be kept on file for at least 12 months.

The winery is required to remit the sales and excise taxes due on in-state sales as if the sale took place on the premises of an Arkansas small farm winery.

This bill defines "small farm winery" and current law defines "small farm winery" at § 3-5-1601. The definitions are similar but there are some differences, which might have significance. Also, this bill does not limit sales to small farm wineries in Arkansas but requires a winery to possess a small farm winery permit issued by ABC. Ark. Code Ann. § 3-5-1602 provides for the issuance by ABC of a small farm winery license to both in-state and out-of-state wineries. Nothing in current law or this bill authorizes ABC to issue a small farm winery permit, and the only reference in the code is to the federal permit. It is difficult to determine whether the differences could result in confusion, and if possible, it would be better to assure that if differences are required, they can be read harmoniously.

The bill contains an emergency clause.