

**Substitute for SENATE BILL No. 370**

By Committee on Federal and State Affairs

2-6

10 AN ACT concerning wines; authorizing sale and shipping *[within,]* into  
11 and out of the state under certain circumstances; amending K.S.A.  
12 2005 Supp. 41-308a and repealing the existing section.  
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) Notwithstanding any other provision of law to the  
16 contrary, a person holding *[a valid farm winery license in this state*  
17 *or a person which holds]* a valid license authorizing the manufacture  
18 of wine in another state *[and which manufacturers wine]* in a quantity  
19 not exceeding 100,000 gallons per year may sell and ship wine to a ~~resi-~~  
20 ~~dent of~~ *[consumer in]* this state if the person holds a valid shipping  
21 permit issued by the director. Such permit may be obtained by filing with  
22 the director an application on a form prescribed by rules and regulations  
23 of the secretary of revenue and paying a permit fee of \$50 for an original  
24 permit and \$10 for a renewal permit ~~together with~~ *[and, if applicable,]*  
25 a true copy of the applicant's current beverage license authorizing the  
26 manufacture of wine in another state.

27 (b) Sale and shipment of wine pursuant to a shipping permit shall be  
28 subject to the following restrictions:

29 (1) The ~~resident~~ *[consumer]* to whom the permit holder sells and  
30 ships wine shall be at least 21 years of age and the wine must be for such  
31 ~~resident's~~ *[consumer's]* personal use and not for resale;

32 (2) ~~The~~ *[if the wine is shipped from outside the state, the]* wine  
33 shall be a wine not otherwise available for sale under the Kansas liquor  
34 control act;

35 (3) the purchaser shall pay the purchase price and all shipping costs  
36 directly to the permit holder;

37 (4) the wine shall be shipped in the original unopened container to  
38 a licensed retailer designated by the purchaser;

39 (5) the permit holder shall report annually to the director of taxation  
40 the total wine sold and shipped ~~into the state~~ *[pursuant to this section]*  
41 during the preceding calendar year;

42 (6) *[if the wine is shipped from outside the state,]* the permit  
43 holder shall remit annually to the director all gallonage taxes due *[pur-*

1 **suant to K.S.A. 41-501 et seq., and amendments thereto,** on sales to  
2 residents of **[consumers in]** this state pursuant to K.S.A. 41-501 et seq.,  
3 ~~and amendments thereto,~~ **[pursuant to this section]** during the preced-  
4 ing calendar year, the amount of such taxes to be calculated as if the wine  
5 were manufactured in this state; and

6 (7) **[if the permit holder is an out-of-state shipper,]** the permit  
7 holder shall allow the director of taxation to perform an audit of the out-  
8 of-state shipper's records upon request.

9 (c) ~~The holder of a shipping permit~~ **[If the holder of the permit is**  
10 **an out-of-state shipper, the permittee]** shall be deemed to have ap-  
11 pointed the secretary of state as the resident agent and representative of  
12 the licensee to accept service of process from the secretary of revenue,  
13 the director and the courts of this state concerning enforcement of this  
14 section, K.S.A. 41-501 et seq., and amendments thereto, and any related  
15 laws and rules and regulations and to accept service of any notice or order  
16 provided for in the liquor control act. Acceptance of such service of pro-  
17 cess by the secretary of state shall be fully binding upon the permit holder.

18 (d) After notice and an opportunity for hearing in accordance with  
19 the provisions of the Kansas administrative procedure act, the director  
20 may refuse to issue or renew or may revoke a shipping permit upon a  
21 finding that the permit holder has failed to comply with any provision of  
22 this section or K.S.A. 41-501 et seq., and amendments thereto, or any  
23 rules and regulations adopted pursuant to such statutes.

24 (e) Wine sold and shipped by a person holding a shipping permit shall  
25 be delivered to the licensed premises of the licensed retailer designated  
26 by the purchaser during hours the retailer is authorized by law to sell  
27 alcoholic liquor. The retailer shall collect taxes with regard to such wine  
28 pursuant to K.S.A. 79-4101 et seq., and amendments thereto, in accord-  
29 ance with rules and regulations of the secretary, as if the sale were made  
30 in this state. The retailer may charge the purchaser a handling fee of not  
31 more than \$5 for each delivery of wine received by the retailer on behalf  
32 of the purchaser. The retailer shall ensure that the purchaser of the wine  
33 is 21 or more years of age. The purchaser shall be required to pay any  
34 amount due for taxes and the handling fee before the retailer releases  
35 the wine to the purchaser. The purchaser shall remove the wine from the  
36 retailer's licensed premises within 30 days after the retailer receives the  
37 wine or such other period of time as agreed upon by the retailer and the  
38 purchaser. The secretary shall provide by rules and regulations for the  
39 method of disposition of such wine if the purchaser fails to remove it  
40 from the retailer's licensed premises within such time.

41 (f) Sale and shipment of wine ~~from outside this state directly to con-~~  
42 ~~sumers in this state~~ **[in the manner provided by this section]** by a  
43 person who does not possess a valid shipping permit issued pursuant to

1 this section is prohibited. Any person who knowingly makes, participates  
2 in, transports, imports or receives any wine in violation of this subsection  
3 is guilty of a class B misdemeanor.

4 (g) The secretary of revenue may adopt rules and regulations to im-  
5 plement, administer and enforce the provisions of this section.

6 (h) This section shall be part of and supplemental to the Kansas liquor  
7 control act.

8 Sec. 2. K.S.A. 2005 Supp. 41-308a is hereby amended to read as  
9 follows: 41-308a. (a) A farm winery license shall allow:

10 (1) The manufacture of domestic table wine and domestic fortified  
11 wine *in a quantity not exceeding 100,000 gallons per year* and the storage  
12 thereof;

13 (2) the sale of wine, manufactured by the licensee, to licensed wine  
14 distributors, retailers, clubs, drinking establishments and caterers;

15 (3) the sale, on the licensed premises in the original unopened con-  
16 tainer to consumers for consumption off the licensed premises, of wine  
17 manufactured by the licensee;

18 (4) the serving free of charge on the licensed premises and at special  
19 events, monitored and regulated by the division of alcoholic beverage  
20 control, of samples of wine manufactured by the licensee or imported  
21 under subsection (f), if the premises are located in a county where the  
22 sale of alcoholic liquor is permitted by law in licensed drinking establish-  
23 ments; ~~and~~

24 (5) if the licensee is also licensed as a club or drinking establishment,  
25 the sale of domestic wine, domestic fortified wine and other alcoholic  
26 liquor for consumption on the licensed premises as authorized by the  
27 club and drinking establishment act; ~~and~~

28 (6) *the sale and shipping, in the original unopened container, to con-*  
29 *sumers ~~inside and~~ outside this state of wine manufactured by the licensee,*  
30 *provided that the licensee complies with applicable laws and rules and*  
31 *regulations of the jurisdiction to which the wine is shipped[; and*

32 ***[(7) the sale and shipping of wine within this state pursuant to***  
33 ***a permit issued pursuant to section 1, and amendments thereto].***

34 (b) Upon application and payment of the fee prescribed by K.S.A.  
35 41-310, and amendments thereto, by a farm winery licensee, the director  
36 may issue not to exceed three winery outlet licenses to the farm winery  
37 licensee. A winery outlet license shall allow:

38 (1) The sale, on the licensed premises in the original unopened con-  
39 tainer to consumers for consumption off the licensed premises, of wine  
40 manufactured by the licensee; and

41 (2) the serving on the licensed premises of samples of wine manu-  
42 factured by the licensee or imported under subsection (f), if the premises  
43 are located in a county where the sale of alcoholic liquor is permitted by

1 law in licensed drinking establishments.

2 (c) Not less than 60% of the products utilized in the manufacture of  
3 domestic table wine and domestic fortified wine by a farm winery shall  
4 be grown in Kansas except when a lesser proportion is authorized by the  
5 director based upon the director's findings and judgment. The label of  
6 domestic wine and domestic fortified wine shall indicate that a majority  
7 of the products utilized in the manufacture of the wine at such winery  
8 were grown in Kansas.

9 ~~(d) A farm winery having a capacity of 100,000 gallons per year or~~  
10 ~~more which sells wine to any distributor shall be required to comply with~~  
11 ~~all provisions of article 4 of chapter 41 of the Kansas Statutes Annotated~~  
12 ~~and of K.S.A. 41-701 through 41-705 and 41-709, and amendments~~  
13 ~~thereto, in the same manner and subject to the same penalties as a~~  
14 ~~manufacturer.~~

15 ~~(e)~~ (d) A farm winery or winery outlet may sell domestic wine and  
16 domestic fortified wine in the original unopened container to consumers  
17 for consumption off the licensed premises at any time between 6 a.m.  
18 and 12 midnight on any day except Sunday and between 12 noon and 6  
19 p.m. on Sunday. If authorized by subsection (a), a farm winery may serve  
20 samples of domestic wine, domestic fortified wine and wine imported  
21 under subsection (f) and serve and sell domestic wine, domestic fortified  
22 wine and other alcoholic liquor for consumption on the licensed premises  
23 at any time when a club or drinking establishment is authorized to serve  
24 and sell alcoholic liquor. If authorized by subsection (b), a winery outlet  
25 may serve samples of domestic wine, domestic fortified wine and wine  
26 imported under subsection (f) at any time when the winery outlet is au-  
27 thorized to sell domestic wine and domestic fortified wine.

28 ~~(f)~~ (e) The director may issue to the Kansas state fair or any bona fide  
29 group of grape growers or wine makers a permit to import into this state  
30 small quantities of wines. Such wine shall be used only for bona fide  
31 educational and scientific tasting programs and shall not be resold. Such  
32 wine shall not be subject to the tax imposed by K.S.A. 41-501, and amend-  
33 ments thereto. The permit shall identify specifically the brand and type  
34 of wine to be imported, the quantity to be imported, the tasting programs  
35 for which the wine is to be used and the times and locations of such  
36 programs. The secretary shall adopt rules and regulations governing the  
37 importation of wine pursuant to this subsection and the conduct of tasting  
38 programs for which such wine is imported.

39 ~~(g)~~ (f) A farm winery license or winery outlet license shall apply only  
40 to the premises described in the application and in the license issued and  
41 only one location shall be described in the license.

42 ~~(h)~~ (g) No farm winery or winery outlet shall:

43 (1) Employ any person under the age of 18 years in connection with

1 the manufacture, sale or serving of any alcoholic liquor;

2 (2) permit any employee of the licensee who is under the age of 21  
3 years to work on the licensed premises at any time when not under the  
4 on-premise supervision of either the licensee or an employee of the li-  
5 censee who is 21 years of age or over;

6 (3) employ any person under 21 years of age in connection with mix-  
7 ing or dispensing alcoholic liquor; or

8 (4) employ any person in connection with the manufacture or sale of  
9 alcoholic liquor if the person has been convicted of a felony.

10 ~~(h)~~ (h) Whenever a farm winery or winery outlet licensee is convicted  
11 of a violation of the Kansas liquor control act, the director may revoke  
12 the licensee's license and order forfeiture of all fees paid for the license,  
13 after a hearing before the director for that purpose in accordance with  
14 the provisions of the Kansas administrative procedure act.

15 ~~(i)~~ (i) This section shall be part of and supplemental to the Kansas  
16 liquor control act.

17 **[New Sec. 3. (a) Notwithstanding any other provision of law to**  
18 **the contrary, a person holding a valid license authorizing the man-**  
19 **ufacture of wine in another state may sell wine to a consumer in**  
20 **this state in accordance with this section if the person holds a valid**  
21 **large winery shipping permit issued by the director. Such permit**  
22 **may be obtained by filing with the director an application on a form**  
23 **prescribed by rules and regulations of the secretary of revenue and**  
24 **paying a permit fee of \$50 for an original permit and \$10 for a**  
25 **renewal permit together with a true copy of the applicant's current**  
26 **beverage license authorizing the manufacture of wine in another**  
27 **state.**

28 **[(b) Sale and shipment of wine pursuant to a large winery ship-**  
29 **ping permit shall be subject to the following:**

30 **[(1) The consumer to whom the permit holder sells wine shall**  
31 **be at least 21 years of age and the wine must be for such consumer's**  
32 **personal use and not for resale;**

33 **[(2) the wine shall be a wine not otherwise available for sale in**  
34 **this state under the liquor control act;**

35 **[(3) the wine shall be shipped in the original unopened con-**  
36 **tainer to a licensed distributor, who shall deliver the wine to the**  
37 **licensed premises of the retailer designated by the consumer;**

38 **[(4) the consumer shall pay the purchase price and all shipping**  
39 **costs directly to the permit holder and shall designate the retailer**  
40 **to whose licensed premises the wine is to be delivered by the**  
41 **distributor;**

42 **[(5) the permit holder shall report annually to the director of**  
43 **taxation the total wine sold and shipped into the state pursuant to**

1 *this section during the preceding calendar year;*

2 *[(6) the permit holder shall remit annually to the director all*  
3 *gallage taxes due pursuant to K.S.A. 41-501 et seq., and amend-*  
4 *ments thereto, on sales to consumers in this state pursuant to this*  
5 *section during the preceding calendar year, the amount of such*  
6 *taxes to be calculated as if the wine were manufactured in this state;*  
7 *and*

8 *[(7) the permit holder shall allow the director of taxation to*  
9 *perform an audit of the out-of-state shipper's records upon request.*

10 *[(c) The holder of a large winery shipping permit shall be*  
11 *deemed to have appointed the secretary of state as the resident*  
12 *agent and representative of the licensee to accept service of process*  
13 *from the secretary of revenue, the director and the courts of this*  
14 *state concerning enforcement of this section, K.S.A. 41-501 et seq.,*  
15 *and amendments thereto, and any related laws and rules and reg-*  
16 *ulations and to accept service of any notice or order provided for*  
17 *in the liquor control act. Acceptance of such service of process by*  
18 *the secretary of state shall be fully binding upon the permit holder.*

19 *[(d) After notice and an opportunity for hearing in accordance*  
20 *with the provisions of the Kansas administrative procedure act, the*  
21 *director may refuse to issue or renew or may revoke a large winery*  
22 *shipping permit upon a finding that the permit holder has failed to*  
23 *comply with any provision of this section or K.S.A. 41-501 et seq.,*  
24 *and amendments thereto, or any rules and regulations adopted pur-*  
25 *suant to such statutes.*

26 *[(e) Wine sold and shipped by a person holding a large winery*  
27 *shipping permit shall be delivered to a licensed distributor for de-*  
28 *livery to the licensed premises of the licensed retailer designated by*  
29 *the consumer. The retailer shall collect taxes with regard to such*  
30 *wine pursuant to K.S.A. 79-4101 et seq., and amendments thereto,*  
31 *in accordance with rules and regulations of the secretary, as if the*  
32 *sale were made in this state. The retailer may charge the consumer*  
33 *a handling fee of not more than \$5 for each delivery of wine received*  
34 *by the retailer on behalf of the consumer. The retailer shall ensure*  
35 *that the consumer is 21 or more years of age. The consumer shall*  
36 *be required to pay any amount due for taxes and the retailer's han-*  
37 *dling fee before the retailer releases the wine to the consumer. The*  
38 *consumer shall remove the wine from the retailer's licensed prem-*  
39 *ises within 30 days after the retailer receives the wine or such other*  
40 *period of time as agreed upon by the retailer and the consumer. The*  
41 *secretary shall provide by rules and regulations for the method of*  
42 *disposition of such wine if the consumer fails to remove it from the*  
43 *retailer's licensed premises within such time.*

1     ***[(f) No person shall sell and ship wine as provided in this section***  
2     ***unless such person possesses a valid large winery shipping permit***  
3     ***issued pursuant to this section. Any person who knowingly makes,***  
4     ***participates in, transports, imports or receives any wine in violation***  
5     ***of this subsection is guilty of a class B misdemeanor.***

6     ***[(g) The secretary of revenue may adopt rules and regulations***  
7     ***to implement, administer and enforce the provisions of this section.***

8     ***[(h) This section shall be part of and supplemental to the Kansas***  
9     ***liquor control act.]***

10     Sec. ~~3~~ ***[4]***. K.S.A. 2005 Supp. 41-308a is hereby repealed.

11     Sec. ~~4~~ ***[5]***. This act shall take effect and be in force from and after  
12     its publication in the statute book.