



HANDBOOK

FOR

FARM WINERIES

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Changes made to this handbook since the previous revision date have been highlighted with a **gray background**. Please report errors, omissions or suggestions for improvement to this handbook to the Division of Alcoholic Beverage Control by telephone at 785-296-7015, by fax at 785-296-7185 or by email to abc_mail@kdor.state.ks.us.

Definitions

"Farm winery" means a winery licensed under the Liquor Control Act by the director to manufacture, store and sell domestic table wine and domestic fortified wine. [Subsection (m) of K.S.A. 41-102]

A farm winery is not treated as a retailer under the Liquor Control Act. [Subsection (v)(2) of K.S.A. 41-102]

A farm winery is not treated as a manufacturer under the Liquor Control Act. [Subsection (o)(2) of K.S.A. 41-102]

A farm winery is limited to producing no more than 100,000 gallons of wine per year. [Subsection (a)(1) of K.S.A. 41-308a as amended by Section 5 of SB297 effective 07/01/06]

"Farm winery outlet" means a facility related to a farm winery and owned by the owner of a farm winery that is licensed by the director to manufacture, store, and sell the same brands of domestic table wine and domestic fortified wine as the related farm winery. [Subsection (g) of K.A.R. 14-11-1]

"Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies. [Subsection (ff) of K.S.A. 41-102]

"Domestic fortified wine" means wine which contains more than 14%, but not more than 20% alcohol by volume and which is manufactured in this state without rectification. [Subsection (j) of K.S.A. 41-102]

"Domestic table wine" means wine which contains not more than 14% alcohol by volume and which is manufactured in this state without rectification or fortification. [Subsection (k) of K.S.A. 41-102]

"Rectification" is not defined in the Liquor Control Act but is defined in Webster's Dictionary as adjusting the proof of alcoholic beverages by adding water or other liquids.

"Original package" means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked or capped, sealed and labeled by the manufacturer of the alcoholic liquor, to contain and to convey any alcoholic liquor. Original container does not include a sleeve. [Subsection (s) of K.S.A. 41-102]

"Manufacturer" means a Kansas brewer, fermenter, distiller, rectifier, wine maker, blender, processor, bottler or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying or bottling alcoholic liquor, beer or cereal malt beverage. "Manufacturer" does not include a microbrewery or a farm winery. [Subsection (o) of K.S.A. 41-102]

"Farmers' Market" means a regularly scheduled gathering of vendors, the primary purpose of which is to sell produce and other agricultural products directly to consumers. [Subsection (e) of K.A.R. 14-11-1]

Application process for initial licensure

The initial application for a farm winery license shall be made upon forms prescribed and furnished by the Director of Alcoholic Beverage Control (ABC) of the Kansas Department of Revenue in Topeka.

For forms and instructions for initial licensure, go to the ABC website at <http://www.ksrevenue.org/abc.htm>, or contact ABC Marketing Unit at: abc_marketing.unit@kdor.state.ks.us or 785-296-7015.

The applicant shall submit the following to the Director of ABC:

- One copy of the application form.
- One copy of Form ABC-1017 - Affidavit of Kansas Farm Winery Regarding Compliance with Requirement to Use 60% Kansas Products Pursuant to Subsection (c) of K.S.A. 41-308a (Application for Initial License). Use Form ABC-1018 for license renewal.
- A non-refundable registration fee of \$50 in the form of a certified, money order, or cashier's check from a Kansas bank. [Subsection (a) of K.S.A. 41-317]
- An annual license fee of \$250 in the form of a certified or cashier's check from a Kansas bank. The license fee shall be returned to the applicant if the application is denied. [Subsection (e) of K.S.A. 41-310]
- If the applicant is a corporation, a certificate of authority issued by the Kansas Secretary of State to do business in Kansas. [K.S.A. 41-313]
- If the applicant is a corporation, provide a copy of a duly executed power of attorney appointing a person who is a citizen of the United States and a resident of Kansas as its agent and authorizing that agent to accept service of process from the Director of ABC and Kansas courts and to exercise full authority of the corporation and full authority, control and responsibility for the conduct of all business and transactions of the corporation within the state relative to alcoholic liquor and the microbrewery business. The agent must be approved by the Director of ABC as having satisfactory character. [K.S.A. 41-313]
- If the applicant is a foreign corporation (not incorporated in Kansas), provide a copy of a duly authorized and executed power of attorney authorizing the Kansas Secretary of State to accept service of process from the Director of ABC and Kansas courts and accept service of any notice or order provided for in the Liquor Control Act. Such service shall be binding upon the corporation. [K.S.A. 41-313]

Within 30 days after the application, supporting documents and fees are submitted to ABC, the Director of ABC shall enter an order either granting or denying the license. This time period may be extended for another 30 days upon the written consent of the applicant. If the Director of ABC fails to enter an order within the 30 days or extended time, then the license shall be deemed to be denied. [K.S.A. 41-319]

If the license is issued, it shall be valid for one year from the date the license is issued. [Subsection (m) of K.S.A. 41-310]

Qualifications for licensure

To be issued a farm winery license, the person (individual, partnership, corporation, LLC or trust) cannot hold or have a beneficial interest in any other license issued under the Kansas Liquor Control Act, except that a farm winery may also be licensed as a manufacturer. The person cannot have a beneficial interest in a distributor, retailer, microbrewery or another farm winery license. [Subsection (f)(3) of K.S.A. 41-311]

The Club and Drinking Establishment Act (K.S.A. 41-2601 et seq.) prohibits any license issued under the act from being held by any person holding a beneficial interest in the manufacture, preparation or wholesaling or retail sale of alcoholic liquor. However, there is an exception for farm wineries. A person who has a beneficial interest in a farm winery may also be issued a class B club, drinking establishment or caterer's license, assuming that the person meets all of the qualifications for such additional license. However, the exception does not allow them to hold a class A club license or combination drinking establishment/caterer license. [Subsection (a)(4)(E) of K.S.A. 41-2623] Subsections (a)(5) and (a)(6) of K.S.A. 41-308a also confirm that farm wineries may also hold these three types of licenses issued under the Club and Drinking Establishment Act.

A farm winery licensee may hold up to three farm winery outlet store licenses. [Subsection (b) of K.S.A. 41-308a]

A farm winery licensee may hold a special order shipping license. [New statute, SB 212, Sec. 1, and K.A.R. 14-11-22]

A farm winery licensee may hold a farmers' market sales permit. [New statute, SB 212, Sec. 2, and K.A.R. 14-11-24]

Subsections (a) and (f) of K.S.A. 41-311 list the qualifications for an initial license. The same requirements must be met for renewal of an existing license except as specifically indicated below.

Partnerships

Each partner must meet all of the qualifications for individual ownership below. [Subsection (f)(5) of K.S.A. 41-311]

The partnership cannot have a beneficial interest in any business which has a retail liquor store license issued under the Liquor Control Act or a retail license issued under the CMB act. [Subsection (f)(4) of K.S.A. 41-311] A "beneficial interest" is defined by subsection (d) of K.A.R. 14-14-1 as any ownership interest by a person or that person's spouse in a business, corporation, partnership, trust, association or other form of business organization which exceeds 5% of the outstanding shares of that corporation or a similar holding in any other form of business organization.

Corporations

At least 50% of the stock must be owned by persons who meet all of the licensing qualifications for individual ownership below. The owners of the remaining stock must meet all of the licensing

qualifications for individual ownership below except for the U.S. citizenship and Kansas and county residency requirements. [Subsection (f)(6) of K.S.A. 41-311]

A person who is an officer and/or director of a corporation but not a stockholder does not have to meet any of the qualifications for an individual owner.

A individual stockholder owning less than 50% of the stock must provide fingerprints, information and documentation as required by K.S.A. 41-311b if that person is a non-resident of Kansas on the date of application or have been a resident of Kansas for less than a year immediately preceding the date of submission of the application. If such stockholder is a corporation, then the Director may require that each officer, director and major stockholder provide fingerprints, information and documentation as required by K.S.A. 41-311b. If such stockholder is a partnership, then the Director may require that each partner provide fingerprints, information and documentation as required by K.S.A. 41-311b. If such stockholder is a trust, then the Director may require that each trustee provide fingerprints, information and documentation as required by K.S.A. 41-311b.

Limited Liability Companies (LLC)

An LLC is not specifically authorized by statute to own a farm winery. However, Attorney General Opinion #2001-19 (04/23/01) states that the Director may determine what qualifications for licensure apply to LLC's, until such time as the legislature makes provision for LLC's in the statutes. On October 25, 2004, the Director decided that LLC's would be treated as corporations for the purpose of meeting the qualifications for licensure. **However**, only those individuals having more than a 5% interest in the LLC must meet the individual qualifications for ownership.

The statutes relating to the formation and operation of LLC's are K.S.A. 17-7663 et seq. enacted in 1999 and 2000. An LLC is composed of one or more members. [Subsection (f) of K.S.A. 17-7663]

Trusts

For trusts to be licensed, each grantor, beneficiary and trustee must meet the licensing qualifications for individual ownership below. However, a beneficiary does not have to be at least 21 years of age. [Subsection (f)(7) of K.S.A. 41-311]

Individuals

- **U.S. Citizenship.** The individual must be a U.S. citizen for at least 10 years. However, the spouse of a deceased retail licensee may hold a retail license if the spouse meets all of the other qualifications and is either a U.S. citizen or becomes a U.S. citizen within one year after the deceased licensee's death. [Subsection (a)(1) of K.S.A. 41-311]

For either an initial or renewal license, this requirement does not apply to the individual's **spouse**. [Subsection (a)(12) of K.S.A. 41-311]

- **Felony conviction.** The individual cannot have been convicted of a felony in Kansas or any other state or the United States. [Subsection (a)(2) of K.S.A. 41-311]

For an initial license, this requirement also applies to the individual's **spouse** regardless of when the conviction occurred. [Subsection (a)(12) of K.S.A. 41-311]

For a renewal license, this requirement also applies to the individual's **spouse**, but only if the conviction occurred during the time that the individual's spouse was licensed under the Liquor Control Act. [Subsection (a)(13) of K.S.A. 41-311]

- **Previous liquor license revocation.** The individual cannot have had a license revoked for cause under the Kansas Liquor Control Act or the Kansas Beer and Cereal Malt Beverage Keg Registration Act or the cereal malt beverage laws of Kansas or any other state. However, a revocation will be disregarded if it occurred more than 10 years ago and was the result of a conviction of a misdemeanor. [Subsection (a)(3) of K.S.A. 41-311]

For an initial license, this requirement applies to the individual's **spouse**. For a renewal license, this requirement does not apply to the individual's **spouse**. [Subsection (a)(12) of K.S.A. 41-311]

- **Conviction for keeping a house of prostitution.** The individual cannot have been convicted of being a keeper of a house of prostitution or is keeping a house of prostitution. Cannot have forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution. [Subsection (a)(4) of K.S.A. 41-311]

For an initial license, this requirement also applies to the individual's **spouse** regardless of when the conviction occurred. [Subsection (a)(12) of K.S.A. 41-311]

For a renewal license, this requirement also applies to the individual's **spouse**, but only if the conviction occurred during the time that the individual's spouse was licensed under the Liquor Control Act. [Subsection (a)(13) of K.S.A. 41-311]

- **Conviction for owning a gambling house, pandering or crime opposed to decency or morality.** The individual cannot have been convicted of being a proprietor of a gambling house, pandering or any other crime opposed to decency and morality and cannot have forfeited bond to appear in court to answer charges for any of these crimes. This includes both felonies and misdemeanors. [Subsection (a)(5) of K.S.A. 41-311] "Pandering" is not currently used in the Kansas criminal law. Black's Law Dictionary defines a "panderer" as one who solicits for prostitution. The definition of "pander" includes being a "pimp" or procurer of persons to be prostitutes. Most of these acts are currently prohibited by K.S.A. 21-3513 (promoting prostitution). Crimes involving morality are defined in subsection (m) of K.A.R. 14-13-1 as including:

- prostitution
- procuring any person
- solicitation of a child under 18 years of age for any immoral act involving sex
- possession or sale of narcotics, marijuana, amphetamines or barbiturates
- rape
- incest
- gambling
- adultery
- bigamy

For an initial license, this requirement also applies to the individual's **spouse** regardless of when the conviction occurred. [Subsection (a)(12) of K.S.A. 41-311]

For a renewal license, this requirement also applies to the individual's **spouse**, but only if the conviction occurred during the time that the individual's spouse was licensed under the Liquor Control Act. [Subsection (a)(13) of K.S.A. 41-311]

- **Age requirement.** The individual must be at least 21 years of age. [Subsection (a)(6) of K.S.A. 41-311]

For either an initial or renewal license, this requirement does not apply to the individual's **spouse**. [Subsection (a)(12) of K.S.A. 41-311]

- **Employee of ABC.** The individual cannot be an employee of the Division of Alcoholic Beverage Control. [Subsection (a)(7) of K.S.A. 41-311]
- **Law enforcement officer.** The individual cannot be a law enforcement official. [Subsection (a)(7) of K.S.A. 41-311] "Official" is not defined in the statute but is interpreted as being any law enforcement officer or head of a law enforcement agency. Since this subsection does not mention jurisdiction, it is assumed that this restriction applies regardless of whether the law enforcement official is located in the same county, city, etc. as the licensee. [Ruling approved by the Director on 01/19/05.]

For an initial license, this requirement applies to the individual's **spouse**. For a renewal license, this requirement does not apply to the individual's **spouse**. [Subsection (a)(12) of K.S.A. 41-311]

- **Supervisor of law enforcement officers.** The individual cannot hold a position that appoints or supervises any law enforcement officer. However, members of the governing body of a city or county (assume this means city council members and county commissioners) are exempt from this restriction. [Subsection (a)(7) of K.S.A. 41-311] Since this subsection does not mention jurisdiction, it is assumed that this restriction applies regardless of whether the individual is located in the county, city, etc. as the licensee. [Ruling approved by the Director on 01/19/05.]

For an initial license, this requirement applies to the individual's **spouse**. For a renewal license, this requirement does not apply to the individual's **spouse**. [Subsection (a)(12) of K.S.A. 41-311]

- **Acting as agent of another.** The individual cannot intend to act as an agent for another in operating the licensed business. [Subsection (a)(8) of K.S.A. 41-311]
- **Resident of Kansas.** The individual must be a resident of Kansas for at least four years immediately preceding the date of application for licensure and must maintain Kansas residency while licensed. [Subsections (f)(1) and (f)(2) of K.S.A. 41-311]

For either an initial or renewal license, this requirement does not apply to the individual's **spouse**. [Subsection (a)(12) of K.S.A. 41-311]

- **Beneficial interest in another license issued under the Liquor Control Act.** The individual cannot have a beneficial interest in a distributor, retailer, microbrewery or another farm winery licensed under the Liquor Control Act. [Subsection (f)(3) of K.S.A. 41-311, K.S.A. 41-308]

A "beneficial interest" is defined by subsection (d) of K.A.R. 14-14-1 as any ownership interest by a person or that person's spouse in a business, corporation, partnership, trust, association or other form of business organization which exceeds 5% of the outstanding shares of that corporation or a similar holding in any other form of business organization.

For an initial license, this requirement applies to the individual's **spouse**. For a renewal license, this requirement does not apply to the individual's **spouse**. [Subsection (a)(12) of K.S.A. 41-311]

- ***Beneficial interest in a license issued under the Club and Drinking Establishment Act.*** The individual may also have a beneficial interest in a class B club license, drinking establishment license and/or caterer's license issued pursuant to the Club and Drinking Establishment Act. The individual cannot have a beneficial interest in class A club license or a combination drinking establishment/caterer license. [Subsection (a)(4)(E) of K.S.A. 41-2623 and subsections (a)(5) and (a)(6) of K.S.A. 308a]

A "beneficial interest" is defined by subsection (d) of K.A.R. 14-14-1 as any ownership interest by a person or that person's spouse in a business, corporation, partnership, trust, association or other form of business organization which exceeds 5% of the outstanding shares of that corporation or a similar holding in any other form of business organization.

For an initial license, this requirement applies to the individual's **spouse**. For a renewal license, this requirement does not apply to the individual's **spouse**. [Subsection (a)(12) of K.S.A. 41-311]

- ***CMB license.*** The individual cannot hold a CMB license issued pursuant to the CMB Act. [Subsection (a)(10) of K.S.A. 41-311]
- ***Current in payment of all liquor taxes.*** If an individual is not current in the payment of all liquor drink taxes and enforcement taxes, gallonage tax, fees or fines to the State of Kansas, then the Director may reject the application for an initial license or license renewal. [Ruling approved by the Director]
- ***Conviction of violating the intoxicating liquor laws.*** The Director may deny an initial license or deny renewal an existing license if the individual or the individual's **spouse** has been convicted of violating the intoxicating liquor laws of any state or the United States or has forfeited bond to appear in court on charges of any such violation, within 10 years immediately preceding the date of application for an initial license or for renewal of an existing license. [Subsection (a) of K.S.A. 41-330]
- ***Conviction of violating the Cereal Malt Beverage Act.*** The Director may deny an initial license or deny renewal an existing license if the individual or the individual's **spouse** has been convicted of violating the laws of any state relating to cereal malt beverages, within 10 years immediately preceding the date of application for an initial license or for renewal of an existing license. [Subsection (b) of K.S.A. 41-330]
- ***Spouse of applicant.*** ABC interprets "this act" in subsection (a)(13) of K.S.A. 41-311 to mean the same act under which the license is being issued, in this case the Liquor Control Act. Because the restriction in subsection (a)(12) of K.S.A. 41-311 is more restrictive than the requirement in subsection (a)(13) but applies only for an initial license, ABC has taken the position that the restriction in subsection (a)(13) applies to spouses at the time that an existing license is renewed,

despite the language in subsection (a)(12) which states that an individual's spouse does not have to meet any qualifications of an individual when a license is renewed. Otherwise, subsection (a)(13) would serve no purpose.

Location of the registered premises

- The location of the registered premises must be zoned agricultural, commercial or business. [Subsection (b) of K.S.A. 41-710] However, Attorney General Opinion 92-92 states that this statute is in conflict with K.S.A. 19-2921, which states that land used for agricultural purposes is exempt from county zoning regulations. There is room for disagreement with this opinion, however, because farm wineries go beyond the mere raising of agricultural products. In addition, a farm winery may use up to 40% of non-Kansas products in making its wine and could be obtaining all of its Kansas products from somewhere other than the site where the farm winery is located. Therefore, it is highly questionable whether every farm winery automatically meets the definition of "agriculture" cited as the basis for the opinion.
- There is no requirement that the farm winery must be located in a "wet" county in order to manufacture or sell wine in the unopened container. However, the farm winery cannot give out free samples of wine unless it is located in a "wet" county where drinking establishments are allowed to sell alcoholic liquor by the drink. [Subsection (a)(4) of K.S.A. 41-308a]
- The premises cannot be located within 200 feet of a public or parochial school, college or church unless the existence of the licensed premises predates the school, college or church. [Subsection (c)(1) of K.S.A. 41-710]
- The premises must conform to all applicable local building regulations, if any. [Subsection (c)(2) of K.S.A. 41-710]
- A farm winery license or outlet store license shall apply only to the premises described in the application and in the license issued and only one location shall be described in the license. [Subsection (g) of K.S.A. 41-308a]
- All original packages of finished wine must be stored upon the licensed premises of the farm winery or the farm winery's outlet store until sold or served as free samples in accordance with applicable statutes. [K.A.R. 14-11-5]
- If a farm winery also has a drinking establishment or class B club license, the licensed premises for the two licenses may partially overlap. [Subsection (a)(5) of K.S.A. 41-308a] However, that portion of the licensed premises of the farm winery where free samples are served to consumers shall not be part of the licensed premises of the drinking establishment or class B club, as this would violate subsections (a)(1) and (a)(2) of K.S.A. 41-2640.

Farm winery outlet stores

A farm winery licensee may hold up to three outlet store licenses. The outlet may **manufacture, store, and** bottle the same brands as the farm winery. [Subsection (b) of K.S.A. 41-308a]

Farmers' market sales permit

A farm winery licensee may hold a farmers' market sales permit. Under the permit, the farm winery may sell domestic table wine and domestic fortified wine manufactured by the farm winery in the original, unopened container at a farmers' market Approved by the Director. [New statute, SB 212, Sec. 2 and K.A.R. 14-11-24] No farmers' market sales permit will be issued for a farmers' market that is located within 200 feet of a church or school, or which is located within a city or county that has not approved the sale of alcoholic liquor at retail. [Subsection (b) and (c) of K.A.R. 14-11-24]

In its application for a farmers' market sales permit, the farm winery must identify which farmers' market at which it plans to sell domestic wine and the day of the week on which it plans to sell domestic wine. No holder of a farmers' market sales permit shall sell domestic wine at any farmers' market other than the one specified in the application or on any day of the week other than the day specified in the application. [Subsection (f) of K.A.R. 14-11-24]

Only the holder of a farmers' market sales permit, a member of the holder's family who is at least twenty-one years of age and has been registered with the director, or an employee of the holder who is at least twenty-one years of age and has been registered with the director may sell domestic wine at a farmers' market. [Subsection (h) of K.A.R. 14-11-24]

A farm winery possessing a farmers' market sales permit may sell domestic wine in the unopened, original container, during its chosen farmers' market's regular hours, but not before 6:00 a.m. and not after 12:00 midnight. [Subsections (a)(3) and (d) of K.S.A. 41-308a]

Employees

Farm winery and outlet licensee's employees are subject to the following restrictions:

- Any employees involved with the manufacture, sale or serving of any alcoholic liquor must be at least 18 years old.
- Any employee who is under the age of 21 years must at all times be under the supervision of an on-premises employee of the licensee who is 21 years of age or over.
- Any employee who is mixing or dispensing alcoholic liquor must be at least 21 years old.

No person shall be employed in the manufacture or sale of alcoholic liquor if the person has been convicted of a felony. [Subsection (h) of K.S.A. 41-308a]

Employees of a farm winery and any person selling domestic wine under a farmers' market sales permit must possess a salesperson's permit. [K.S.A. 41-333]

Days and hours of sales

Farm wineries and their outlet stores may sell their wine in unopened original containers at the licensed premises for off-premises consumption between 6 a.m. and 12 midnight on any day except Sunday and between 12 noon and 6 p.m. on Sunday. [Subsections (a)(3) and (d) of K.S.A. 41-308a]

Farm wineries and their outlet stores are not subject to the restrictions on days and hours of sale that are imposed on retail liquor stores by K.S.A. 41-712.

If a farm winery is also licensed as a club or drinking establishment, it may sell wine and other alcoholic liquor for consumption on the licensed premises in accordance with the Club and Drinking Establishment Act, specifically K.S.A. 41-2614. [Subsection (a)(5) of K.S.A. 41-308a]

Label requirements and approval

Subsection (b)(2) of K.S.A. 41-211 authorizes the Secretary of Revenue to adopt regulations establishing standards consistent with federal law for the proper labeling of bottles and bulk containers such as barrels and casks for alcoholic liquor manufactured or sold in Kansas. The Secretary has adopted K.A.R. 14-6-3, which sets forth the information which must appear on each label:

- quantity of liquor in the container
- class (table or fortified) and type of liquor (wine)
- alcoholic content - either actual percentage or indicating a range such as "table" or "fortified"
- name of importer or manufacturer (see note below)

However, if any of these requirements are contrary to TTB rules, then the label may comply with TTB requirements instead. [subsection (d) of K.A.R. 14-6-3]

Each farm winery shall submit for the Director's approval a sample of each label used on the wine it produces before the wine is offered for sale. The \$25 registration fee specified in subsection (b) of K.S.A. 41-331 does not apply to farm wineries. To comply, a farm winery should obtain, complete and submit a Farm Winery Application for Brand Registration and Label Approval (form ABC-1010). This form with supporting documents and instructions may be obtained from ABC's webpage at <http://www.ksrevenue.org/abcbrandreg.htm> [subsection (a) of K.A.R. 14-11-26]

Labels for domestic wine and domestic fortified wine manufactured by the farm winery must indicate that a majority of the products utilized in the manufacture of the wine at such winery were grown in Kansas unless the farm winery has submitted a rejection letter for such label to the ABC. [subsection (c) of K.S.A. 41-308a; subsection (b) of K.A.R. 14-11-26]

Director's permit for the import of small quantities of wine

The Director may issue a permit to the Kansas State Fair or to any bona fide group of grape growers or wine makers for the import into Kansas of small quantities of wine to be used for bona fide educational and scientific testing tasting programs. (The term "bona fide" is not defined in either case.) Such wine may only be given out as free samples and shall not be sold. Such wine shall not be subject to the Gallonage Tax imposed by K.S.A. 41-501 et seq. The permit shall identify specifically the brand and type of wine to be imported, the quantity to be imported, the tasting program for which the wine is to be used and the time and location of such program. [Subsection (f) of K.S.A 41-308a]

K.A.R. 14-14-13 requires that the application for a permit be submitted to the Director at least 45 days before the tasting program is to be held. The application must include the following:

- The date and time of the program.

- The exact location where the program will be held.
- The brand, type and quantity of wine to be imported.
- A statement that any wine samples offered will be consumed on the premises described in the application and in accordance with all applicable law.

A copy of the permit must accompany the wine imported at all times.

Products used in the manufacture of wine

Not less than 60% of the products utilized in the manufacture of domestic table wine and domestic fortified wine by the licensee shall be grown in Kansas. **However**, upon application of a licensee using form ABC-1017 (new application) or form ABC-1018, the Director may authorize a lesser proportion based upon the Director's findings and judgment (see below). However, in no instance may the Director authorize a proportion below 51%. [Subsection (c) of K.S.A. 41-308a; K.A.R. 14-11-27]

The 60% requirement applies to each bottle of wine manufactured. The 60% is based upon the gallons of juice used in the wine production and does not include water or sugar added in the production process. [K.A.R. 14-11-27]

Requests for waivers of the 60% requirement using form ABC-255 must include a plan for coming into compliance with the requirement and will be considered on a case by case basis. Normally waivers will be restricted to situations where Kansas products being used by the licensee become temporarily unavailable due to circumstances beyond the control of the licensee, such as unusually bad weather or insect or disease damage. ***A waiver of the 60% requirement will not be made solely to enable a new farm winery to get started.*** [Ruling made by the Director on 02/04/05]

Farm winery also licensed as a manufacturer

A farm winery that is also licensed as a manufacturer must maintain separate storage facilities, separate production records, and separate sales records for all alcoholic liquor manufactured under the manufacturer's license. [Subsection (c) of K.A.R. 14-11-25]. No alcoholic liquor manufactured under the manufacturer's license may be displayed, sold, or sampled in the farm winery, farm winery outlet, or at a farmers' market. [Subsection (d) and (e) of K.A.R. 14-11-25] No wine manufactured under the manufacturer's license shall be shipped to any consumer in Kansas unless the manufacturer also possesses a special order shipping license. [New section 1 of Senate Bill 212, effective 7/1/09] No wine manufactured under the manufacturer's license shall be shipped under the farm winery's special order shipping license. [Subsection (d) of K.A.R. 14-11-25]

Distribution of products and franchise agreements

A farm winery may self-distribute its products directly to consumers, retail liquor stores, clubs, drinking establishments, caterers, and holders of temporary permits issued under the Club And Drinking Establishment Act. A farm winery may also distribute its products through licensed distributors. [Subsection (a)(2) of K.S.A. 41-308a]

If a farm winery chooses to distribute a particular product through a licensed distributor, then it must enter into an exclusive franchise agreement with that distributor for a specified geographic area, which may be the whole state or part of the state. A farm winery shall not both self-distribute and use a licensed distributor for the same product within the same geographic area. [Subsection (a) of K.S.A. 41-410] There is a box on the Brand Registration and Label Approval form (ABC-1010) to indicate whether each label will be self-distributed or distributed through a licensed distributor.

K.S.A. 41-410 requires that all distributors licensed in Kansas must provide to ABC a copy of the franchise agreement between the distributor and their supplier, manufacturer, farm winery or microbrewery. ABC's policy is to permit a termination of the franchise agreement if the distributor agrees to it. This policy was originally stated in the Director's memo dated May 4, 1987, as follows:

"A franchise granted by a brand owner is considered to be in perpetuity except for a reasonable cause or a voluntary surrender by the distributor."

This policy was sustained by Attorney General Opinion No. 88-41 dated March 24, 1988, which stated in part:

"Change of ownership of a brand at the supplier's level does not, in and of itself, constitute "reasonable cause" for a supplier to terminate a franchise agreement pursuant to K.S.A. 41-410 of the Liquor Control Act."

Termination of an existing franchise agreement does not require ABC approval. However, the manufacturer, supplier, farm winery or microbrewery must give ABC at least 30 days advance notice before the termination becomes effective. The notice to ABC must be accompanied by an affidavit stating that the termination, modification or alteration is not caused by the failure of the distributor to comply with any provision of the Liquor Control Act or any rules and regulations adopted pursuant thereto. The manufacturer, supplier, farm winery or microbrewery is encouraged to use ABC's affidavit form - Form ABC-1007. Upon receipt of the notice of termination and affidavit, the Director is required to "immediately" send notice by certified mail to all affected parties of the impending termination, modification or alteration of the franchise agreement. [Subsections (c) and (d) of K.S.A. 41-410]

The ABC Marketing Unit will then perform the following actions with regard to a termination of a distributor by a manufacturer, supplier, farm winery or microbrewery:

- Mail a letter by certified mail to all affected parties notifying them of the pending termination. This would include the distributor being terminated and the proposed new distributor, if any. A copy of the notice of termination and the required affidavit from the manufacturer, supplier, farm winery or microbrewery will be enclosed. The letter will state the effective date of the termination, which will be 30 days after ABC received the notice of termination from the manufacturer, supplier, farm winery or microbrewery. A copy of this letter will also be sent to the manufacturer, supplier, farm winery or microbrewery so that they are made aware of the effective date of the termination on ABC's records.

- Unless prohibited by court order, on the next business day following the 30 day waiting period ABC will update the brand registration and label approval database on ABC's website to reflect the termination and, if applicable, the transfer of products to the new distributor.

Termination of a franchise agreement, other than by mutual agreement of the parties, must be for "reasonable cause." [Subsection (f) of K.S.A. 41-410] In any situation where termination is disputed, the aggrieved party may file an action in state district court to determine whether there is "reasonable cause." [Subsection (e) of K.S.A. 41-410] See *House of Schwan v. Norwood*, 25 KanApp2nd 539, 966 P.2d 89. There is no statutory definition or clear legislative intent as to what constitutes "reasonable cause." If the district court finds that "reasonable cause" did not exist, then the Director may take administrative action against the licensee that initiated the termination..

The statutes do not address the situation where a supplier goes out of business with one or more franchise agreements still running with Kansas distributors. If approval is requested from ABC for a new franchise agreement on a product currently covered by a franchise agreement, and there is an assertion that the supplier under the existing franchise agreement has gone out of business, then ABC will ask for proof. ABC will also try to contact the supplier before moving their permit to inactive status.

Wine manufactured solely and exclusively for sacramental purposes

Bottles of wine made solely and exclusively for sacramental purposes shall be labeled as such when bottled. The bottles shall be stored in an area of the licensed premises which is segregated from the other bottles of wine made by the farm winery and posted with a sign indicating that the bottles stored within are to be sold solely and exclusively for sacramental purposes. [Ruling by the Director on 08/07/06]

Authorized activities

Farm wineries may engage in the activities listed below (those that are also authorized at farm winery outlets are so designated):

Manufacturing. Farm wineries and farm winery outlets may manufacture and store domestic table wine and domestic fortified wine totaling no more than 100,000 gallons per year. [Subsection (a)(1) of K.S.A. 41-308a] Since that is the primary activity of a winery, all steps of the manufacturing process must take place on the licensed premises. Subsection (o) of K.S.A. 41-102 describes the activities that are included in the manufacturing process. The manufacturing process begins with the fermentation of the grapes, fruits, berries or other agricultural products (as listed in subsection (ff) of K.S.A. 41-102) and ends with the finished wine sealed in an original package (see subsection (s) of K.S.A. 41-102). [Ruling approved by the Director on 08/07/06.]

Sales to other licensees. Farm wineries may sell wine to licensed wine distributors, retailers, clubs, drinking establishments, caterers and temporary permit holders under the Club and Drinking Establishment Act. [Subsection (a)(2) of K.S.A. 41-308a]

Delivery to other licensees. A farm winery may deliver its products to distributors, retailers, clubs, drinking establishments, and caterers. Holders of temporary permits must pick up their purchases from the winery. [Subsection (b) of K.A.R. 14-11-7] The vehicles used by the farm winery to make such deliveries do not need to be registered with ABC. [Ruling by the Director on 12/20/06]

Sales to retail customers physically present on the licensed premises. Farm wineries and farm winery outlets may sell wine in the unopened original container for consumption off the licensed premises to consumers who are at least 21 years of age and physically present on the licensed premises. Consumers are defined as purchasing the wine for their personal consumption and not for resale. The consumer may request that the farm winery ship the wine to an address specified by the consumer rather than take the wine with them. If the address is in a state other than Kansas, then the farm winery should be sure that such shipment complies with all applicable laws and regulations of such state. No winery shipping permit is required for shipping in this situation, whether the address is in Kansas or outside of Kansas. [Subsections (a)(3) of K.S.A. 41-308a and subsection (g) of K.S.A. 41-104] Subsection (g) of K.S.A. 41-104 is interpreted as applying to farm wineries because the subsection states that it applies to "a person which holds a valid license authorizing the manufacture of wine" rather than to a "manufacturer." Farm wineries are defined by subsection (m) of K.S.A. 41-102 as being licensed to "manufacture" wine. "Shipment" in that subsection is interpreted as meaning that a common carrier is utilized and does not authorize the farm winery itself to deliver wine to individual consumers at a location away from the licensed premises. [Ruling by ABC Director on 10/03/06.] There are no restrictions on the retail price charged.

Sales to retail customers **not** on the licensed premises. Farm wineries and farm winery outlets may sell wine in the original unopened original container to consumers via the internet, mail or telephone. Consumers are defined as purchasing the wine for their personal consumption and not for resale. If the wine is shipped to an address in Kansas, then the farm winery must have a special order shipping license and follow all of the provisions of K.S.A. 41-____ (new statute created by section 1 of Senate Bill 212 effective 07/01/09). If the wine is shipped to an address outside of Kansas, then no special order shipping license is required, but the farm winery should be sure that such shipment complies with all applicable laws and regulations of such state. [Subsection (a)(6) of K.S.A. 41-308a] There are no restrictions on the retail price charged.

Sale of domestic wine at a farmers' market. Farm wineries may sell domestic wine manufactured by the farm winery in the original, unopened container at a farmers' market approved by the Director. The farm winery must possess a farmers' market sales permit from the Director. Dispensing of samples is prohibited at the farmers' market. [Section 2, Senate Bill 212, effective 7/01/09]

Serving of samples on the licensed premises. Farm wineries and farm winery outlets may serve on the licensed premises free samples of wine manufactured by the licensee if the premises is located in a county where the sale of alcoholic liquor is legally permitted in licensed drinking establishments. Samples may be served only during those days and times that clubs and drinking establishments are authorized to serve and sell alcoholic liquor. [Subsections (a)(4) and (e) of K.S.A. 41-308a] If the farm winery also has a class B club or drinking establishment license, the free samples shall not be served in any part of the licensed premises of the farm winery which is also part of the licensed premises of the class B club or drinking establishment. [Subsection (a)(1) of K.S.A. 41-2640]

Serving of samples at special events off-premises. Farm wineries may serve at special events monitored and regulated by ABC and held off the licensed premises free samples of wine manufactured by the licensee if the location is in a county where the sale of alcoholic liquor is legally permitted in licensed drinking establishments and is held at a location allowed by K.S.A. 41-719.

Samples may be served only during those days and times that clubs and drinking establishments are authorized to serve and sell alcoholic liquor. [Subsections (a)(4) and (e) of K.S.A. 41-308a] On 11/07/05, the Director ruled that "monitored and regulated by the division of ABC" may consist of reviewing the proposed activities and conditions for compliance with all applicable statutes and regulations. Farm wineries must request approval for such an activity by letter sent to the Director.

Outlet stores. Farm wineries may operate up to three outlet stores in addition to their winery location. Each outlet store must be separately licensed by the farm winery. [Subsection (b) of K.S.A. 41-308a]

Importing of wine for tasting programs. Farm wineries may import into Kansas small quantities of wine to be used for bona fide educational and scientific tasting programs, if granted a permit by the Director. See below for the section regarding such permits. [Subsection (f) of K.S.A. 41-308a] Such tasting programs may be conducted on the licensed premises of the farm winery or farm winery outlet store. However, there is no statutory guidance on where else, if any, farm wineries may conduct such tasting programs. [Subsection (a)(4) of K.S.A. 41-308a]

Permitting consumption of wine on farm winery's property not within the licensed premises. Farm wineries may designate one or more areas of its private property (such as a "wine garden") at the location of the farm winery but which are not part of the licensed premises of the farm winery and not open to the public, for consumers to open and consume bottles of wine purchased at the farm winery. Such areas must be clearly defined and marked as such. This practice will not be permitted at farm winery outlet stores. [Interpretation of Subsection (b)(2) of K.S.A. 41-719 approved by the Director on 08/07/06]

Advertising and display of products. Domestic wine intended for retail sales may only be displayed away from the licensed premises (winery or outlet stores) if done at a state or county fair or other agricultural show and only if approved in writing by the Director. Farm wineries should request this approval in writing as far in advance as possible. Sales of wine, dispensing of free samples, and taking orders at such events are prohibited. [K.A.R. 14-11-15]

Contracting for bottling and labeling services. An outside contractor may be used to bottle and label wine produced if the practice is approved by the TTB and also subject to the following restriction:

All bottling and labeling services must be performed on the licensed premises of the Kansas winery with the owner or an employee of the Kansas farm winery present to assure that all Kansas statutes and regulations are followed. [Approved by the Director on 04/09/07]

Prohibited activities

Consumption on the licensed premises. Farm wineries **and farm winery outlets** shall not sell wine to a customer for consumption on the licensed premises unless the farm winery also has a drinking establishment license or class B club license issued under the Club and Drinking Establishment Act. [Subsections (a)(5) of K.S.A. 41-308a]

Sales to minors. Farm wineries and farm winery outlets shall not sell or furnish wine or other alcoholic liquor to a minor (under 21 years of age). [K.A.R. 14-11-28]

Open containers on the license premises. Farm wineries and farm winery outlets shall not allow an original package or container of any domestic table wine to be opened in or on that portion of the licensed premises that is used for retail sales. [K.A.R. 14-11-6] Any area used for customer sampling must be clearly designated as being separate from the retail sales area.

Administrative actions for violations of statutes and regulations

K.A.R. 14-16-15 provides for revocation or suspension of a farm winery license for any violation of the Liquor Control Act or its regulations. K.S.A. 41-328 also authorizes the imposition of a civil fine of not more than \$1,000 per violation for any violation of the Liquor Control Act or the regulations adopted thereunder.

Gallongage Tax

Kansas farm wineries and farm winery outlets must pay the gallonage tax on all domestic table wine and domestic fortified wine manufactured. [Subsection (a) and (b) of K.S.A. 41-501]

The Kansas gallonage tax rates on domestic wine and domestic table wine are listed below. [Subsection (b)(1) of K.S.A. 41-501]

- \$0.30 per gallon on wine containing 14% or less alcohol by volume
- \$0.75 per gallon on wine containing more than 14% alcohol by volume

Wine sold to out-of-state wholesalers are tax exempt from the gallonage tax. The winery must provide an affidavit with their monthly report to the Director for such exempt sales. Bills of lading are subject to review by the Director. [Subsection (c) of K.S.A. 41-501]

Wine manufactured solely and exclusively for sacramental purposes for sale to religious organizations are exempt from the gallonage tax. [Subsection (d) of K.S.A. 41-501] The Director ruled on 08/07/06 that the words "solely and exclusively" means that the wine must be designated and marked "for sacramental purposes only" at the time it is bottled in order to qualify for the gallonage tax exemption

Reporting

Kansas farm wineries and farm winery outlets must report and remit their gallonage tax to the ABC Marketing Unit each month using the Kansas Farm Winery Monthly Gallongage Tax Return and Report form (ABC-1013). This form must be filed each month even if no domestic table wine or domestic fortified wine is manufactured. [K.S.A. 41-502]

A farm winery that also possesses a manufacturer's license shall report and pay gallonage tax on alcoholic liquor manufactured under the manufacturer's license separately from its farm winery gallonage tax.

Record keeping

All records of all domestic table wine and domestic fortified wine must be maintained on the licensed premises for at least three years and are subject to inspection and audit by ABC or Department of Revenue employees authorized by the ABC Director.

Other records required to be kept include:

- Records of all equipment, supplies, services, and retailer advertising specialty and product display items furnished to retailers, clubs, drinking establishments or caterers, including the following information regarding each item:
 - ◆ name and address of the retailer, club, drinking establishment or caterer receiving the item
 - ◆ date furnished
 - ◆ description
 - ◆ cost of the item furnished as determined by the invoice price
 - ◆ any charges to the retailer, club, drinking establishment and caterer
- [K.A.R. 14-10-12]

Liquor enforcement tax

Kansas imposes a liquor enforcement tax on all wine sold by farm wineries to clubs, drinking establishments, caterers, and temporary permit holders, and to Kansas consumers. A "Kansas consumer" is defined as a person who purchases wine and takes delivery of that wine on the licensed premises of either the farm winery or farm winery outlet store. The tax is 8% of the retail sale price of the wine and is collected by the farm winery from the consumer at the time of sale. [K.S.A. 79-4101] This tax is a substitute for the Kansas sales tax. Thus such sales are exempt from the Kansas sales tax. [Subsection (g) of K.S.A. 41-501 and subsection (a) of K.S.A. 79-3606] The liquor enforcement tax is remitted monthly to the Kansas Department of Revenue with report forms provided by the Department.

Sales of wine by a farm winery or farm winery outlet store to a consumer are not subject to the liquor enforcement tax in these situations:

- When the wine is sold to a consumer via the internet, mail, telephone, etc. (the consumer is not present on the licensed premises) and is shipped to that consumer at an address outside of Kansas. However, the wine sale may be subject to taxes imposed by the state that the wine is shipped to. [Memo from the Director of KDOR Division of Policy & Research to the Director of ABC dated 07/17/06]
- When the wine is sold to a consumer present on the licensed premises but is shipped to that consumer at an address outside of Kansas. However, the wine sale may be subject to taxes

imposed by the state that the wine is shipped to. [Memo from the Director of KDOR Division of Policy & Research to the Director of ABC dated 07/18/06]

Tax bond

Farm wineries are required by the Kansas Department of Revenue to post a \$2,000 bond to assure payment of gallonage and liquor enforcement taxes.

Appendix A

41-308a. Farm winery license; rights of licensee. (a) A farm winery license shall allow:

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

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

(3) the sale, on the licensed premises in the original unopened container to consumers for consumption off the licensed premises, of wine manufactured by the licensee;

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

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

(6) if the licensee is also licensed as a caterer, the sale of domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the unlicensed premises as authorized by the club and drinking establishment act;

(7) the sale and shipping, in the original unopened container, to consumers outside this state of wine manufactured by the licensee, provided that the licensee complies with applicable laws and rules and regulations of the jurisdiction to which the wine is shipped; and

(8) the sale and shipping of wine within this state pursuant to a permit issued pursuant to section 4, and amendments thereto.

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

(1) The sale, on the licensed premises in the original unopened container to consumers for consumption off the licensed premises, of wine manufactured by the licensee;

(2) the serving on the licensed premises of samples of wine manufactured by the licensee or imported under subsection (f), if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments; and

(3) the manufacture of domestic table wine and domestic fortified wine and the storage thereof; provided that the aggregate quantity of wine produced by the farm winery licensee, including all farm winery outlets, shall not exceed 100,000 gallons per year.

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

(d) A farm winery or winery outlet may sell domestic wine and domestic fortified wine in the original unopened container to consumers for consumption off the licensed premises at any time between 6 a.m. and 12 midnight on any day except Sunday and between 12 noon and 6 p.m. on Sunday. If authorized by subsection (a), a farm winery may serve samples of domestic wine, domestic fortified wine and wine imported under subsection (e) and serve and sell domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the licensed premises at any time when a club or drinking establishment is authorized to serve and sell alcoholic liquor. If authorized by subsection (b), a winery outlet may serve samples of domestic wine, domestic fortified wine and wine

imported under subsection (f) at any time when the winery outlet is authorized to sell domestic wine and domestic fortified wine.

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

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

(g) No farm winery or winery outlet shall:

(1) Employ any person under the age of 18 years in connection with the manufacture, sale or serving of any alcoholic liquor;

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

(3) employ any person under 21 years of age in connection with mixing or dispensing alcoholic liquor; or

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

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

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

History: L. 1983, ch. 161, § 3; L. 1985, ch. 170, § 25; L. 1987, ch. 182, § 141; L. 1988, ch. 165, § 1; L. 1990, ch. 178, § 1; L. 1992, ch. 201, § 2; L. 1998, ch. 191, § 3; L. 2005, ch. 201, § 14; L. 2006, ch. 206, § 5; L. 2007, ch. 178, § 2, L. 2009, ch. 112, §4; July 1, 2009.

[ABC Attorney's note: The reference in subsection (a)(4) to "subsection (f)" should have been changed to "subsection (e)" by Section 5 of 2006 Senate Bill No. 297 but was overlooked],

Senate Bill 212, new section 2: (a) Notwithstanding any other provisions of the Kansas liquor control act, the club and drinking establishment act or the Kansas cereal malt beverage act, any person who is licensed to sell wine pursuant to K.S.A. 41-308a, and amendments thereto, may apply to the director for an annual bona fide farmers' market sales permit. Such permit shall authorize the licensee, a member of the licensee's family or an employee of the licensee to sell wine in the original unopened container produced and bottled by the licensee at a bona fide farmers' market located at a site approved by the director.

(b) Permits issued under this section shall be valid for one year from the date of issuance. A licensee shall not hold more than one bona fide farmers' market sales permit at any one time.

(c) The licensee may only sell wine at a single bona fide farmers' market on one day of the week. The location of the bona fide farmers' market shall be specified in the application submitted to the director. The director shall notify the city, county and applicable law enforcement agency where the bona fide farmers' market is to be held and of the issuance of a permit under this section for the sale of wine at such bona fide farmers' market.

(d) For the purposes of this section, “bona fide farmers’ market” means any location held out to be a farmers’ market that is subject to inspection by the department of agriculture.

(e) The secretary may adopt rules and regulations as necessary to implement the provisions of this section.

(f) This section shall be a part of and supplemental to the Kansas liquor control act.

Legislative History

- K.S.A. 41-308a was passed in 1983 as section 3 of Substitute for House Bill No. 2551 (see 1983 Session Laws, Chapter 161) effective July 1, 1985.
- K.S.A. 41-308a was amended in 1985 as section 25 of House Bill No. 2250 (see 1985 Session Laws, Chapter 170) effective July 1, 1985, as follows:
 - in subsection (a), added authorization to sell to retailers (retail liquor stores).
 - added new subsection (b) requiring not less than 60% of Kansas products be used to manufacture domestic table wine.
 - in subsection (c), made requirement to comply with provisions of Article 4 of the Liquor Control Act contingent upon having a capacity to manufacture at least 50,000 gallons per year.

The same bill also made changes to other statutes relating to farm wineries:

- in subsection (e) of K.S.A. 41-310, reduced the annual license fee from \$1,100 to \$250.
 - added subsection (f) to K.S.A. 41-311 providing separate qualifications for licensure. Previously, the qualifications for licensure were the same as for a manufacturer if the winery sold to a distributor or otherwise the same as for a retail liquor store.
 - added to subsection (b) of K.S.A. 41-317, reduced the tax bond amount from \$25,000 (same as a manufacturer) to \$2,000.
 - changed the zoning requirements in K.S.A. 41-710.
- K.S.A. 41-308a was amended in 1987 as section 141 of House Substitute for Substitute for Senate Bill No. 141 (see 1987 Session Laws, Chapter 182) effective April 30, 1987, as follows:
 - in subsection (a), added authorization to sell to consumers for on-premises consumption if also licensed as a club or drinking establishment. Also, eliminated authority to sell to nonbeverage users.
 - in subsection (a), added authorization to serve samples on the licensed premises.
 - in subsection (d), changed hours of sales to consumers for off-premises consumption from 6 am to midnight on Mondays through Saturdays and from noon to 6 pm on Sundays to the same hours as retail liquor stores. Also set hours for serving samples as being the same as when clubs and drinking establishments may serve and sell alcoholic liquor.
 - in subsection (f), changed the age and conviction requirements for person involved in the manufacture, sale, mixing, dispensing and serving of alcoholic liquor on the licensed premises.
 - K.S.A. 41-308a was amended in 1988 as section 1 of Senate Bill No. 598 (see 1988 Session Laws, Chapter 165) effective July 1, 1988, as follows:
 - in subsection (a)(2), authorized the sale of wine to retailers, clubs, drinking establishments and caterers in addition to wine distributors already allowed.

- in subsection (b), authorized using less than 60% Kansas products if approved by Director based upon the Director's findings and judgment rather than the Director finding that the products are not available in this state.
 - in subsection (a)(4), authorized the serving on the licensed premises of samples of wine imported under subsection (e).
 - in subsection (d), changing hours of sales to consumers for off-premises consumption from the sale as retail liquor stores to between 6 am and 12 midnight on any day except Sunday and between 12 noon and 6 pm on Sunday.
 - added new subsection (e) allowing a bona fide group of grape growers or wine makers a permit to import small quantities of wine for educational and scientific tasting programs.
- K.S.A. 41-308a was amended in 1990 by section 1 of House Bill No. 2714 (see 1990 Session Laws, Chapter 178) effective May 17, 1990, as follows:
 - in subsection (h), added requirement to conduct hearings on violations in accordance with the Kansas Administrative Procedures Act and authorizes Director to order the forfeiture of all license fees paid.
 - K.S.A. 41-308a was amended in 1992 by section 2 of House Bill No. 2719 (see 1992 Session Laws, Chapter 201) effective May 7, 1992, as follows:
 - added new section (b) authorizing up to two licensed winery outlet stores per farm winery which are permitted to sell wine to consumers for off-premises consumption and to serve samples on the licensed premises in counties which permits drinking establishments. Such sales may take place and samples may be served during the same times that the farm winery is permitted to make such sales.

The same bill also amended K.S.A. 41-310 by adding to subsection (e) the license fee for a winery outlet store of \$50.

- K.S.A. 41-308a was amended in 1998 by section 3 of House Bill No. 2103 (see 1998 Session Laws, Chapter 191) effective July 1, 1998, as follows:
 - in subsections (a)(1), (a)(5), (c) and (e), added "domestic fortified wine" as a product that farm wineries may manufacture and sell.

The same bill also amended K.S.A. 41-102 by adding a new subsection (j) defining "domestic fortified wine."

- K.S.A. 41-308a was amended in 2005 by section 14 of Senate Bill No. 298 (see 2005 Session Laws, Chapter 201) effective July 1, 2005, as follows:
 - in subsection (a)(4), clarified that samples are to be free and added that samples may be offered at special events monitored and regulated by ABC.
 - in subsection (b), increased the number of outlet stores allowed from two to three.
 - in subsection (d), increased the maximum manufacturing capacity from 50,000 to 100,000 gallons per year.
- K.S.A. 41-308a was amended in 2006 by section 5 of Senate Bill No. 297 (see 2006 Session Laws, Chapter 206) effective July 1, 2006, as follows:
 - added to subsection (a)(1) the limit of 100,000 gallons of wine production per year.

- added new subsection (a)(6) authorizing the sale and shipping of wine in the unopened containers to consumers in other states as long as the farm winery complies with the laws of the state it ships wine into.
 - added new subsection (a)(7) authorizing the sale and shipping of wine within Kansas pursuant to a winery shipping permit.
 - deleted subsection (d) requiring farm wineries producing 100,000 gallons of wine per year to comply with certain provisions of Liquor Control Act that apply to wine manufacturers.
- K.S.A. 41-308a was amended in 2007 by section 2 of Senate Bill No. 30 (see 2007 Session Laws, Chapter 178) effective May 24, 2007, as follows:
 - added new subsection (a)(6) authorizing a farm winery to also be licensed as a caterer and authorizing the sale of domestic wine, domestic fortified wine and other alcoholic liquor in accordance with the Club and Drinking Establishment Act.
 - K.S.A. 41-308a was amended in 2008 by section 1 of House Bill No. 2908 (see 2008 Session Laws, Chapter 126) effective July 1, 2008, as follows:
 - Allows a farm winery to sell domestic table wine and domestic fortified wine to the holder of a temporary permit issued under the Club and Drinking Establishment Act.
 - K.S.A. 41-102 was amended in 2008 by section 4 of House Bill No. 2908 (see 2008 Session Laws, Chapter 126) effective July 1, 2008, as follows:
 - Removed the language “from agricultural products grown in this state” from the definition of domestic table wine and domestic fortified wine.
 - K.S.A. 41-308a was amended in 2009 by section 4 of Senate Bill No. 212 (see 2009 Session Laws, Chapter 112) effective July 1, 2009, as follows:
 - Allows a farm winery outlet to manufacture and store domestic table wine and domestic fortified wine, if the aggregate quantity of all wine produced by the farm winery licensee does not exceed 100,000 gallons.