

Introduction - Winery

We encourage the committee to set lofty economic goals for the Alabama wine industry, while developing a supporting legal structure and viticulture program. With these actions, it is not unreasonable to achieve a 6-fold market share increase for instate wine during the next 10 to 15 years.

For 2012, the [Auburn Economic & Community Development Institute](#) reports that Alabama wineries contributed \$8 million in economic impact and 159 jobs while at approximately a 0.5 percent state market share. Achieving a 3.0 percent share could increase those figures to \$48 million and 950 jobs.

Table 1.1

	Wine Consumption Gallons (2011)	Produced and Bottled (TTB 2014)	Market Share (%)	Wholesale License(TTB)
Alabama	7,189,000	32,378	0.45%	104
Maine	3,663,000	54,317	1.48%	338
Colorado	11,791,000	416,607	3.53%	433
North Carolina	16,605,000	1,615,791	9.73%	649

Three-Tier System

Alabama wineries believe and know that our issues are addressed nationally state-by-state while at the same time supporting the three-tier system. We also believe and know that Alabama can recognize small craft manufacturers with associated privileges not afforded to “industrial” beverage alcohol manufacturers or for imported wines.

Almost every state uses the “three-tier” system as the basis for alcohol control laws. This system has a license structure with retailers, wholesalers, and manufacturers. States employ these three core license types to create any number of “hybrid” structures by combining or limiting privileges.

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Neighboring Mississippi controls all wine and spirits above 8% ABV through a single state warehouse. Retail package stores order full cases of wine and spirits from the ABC warehouse for off-premise sale. However, a package store is allowed to “hold” a wholesale license for resale to smaller package stores and also to restaurants. There are 384 [Mississippi retail package stores](#) with wholesale licenses.

Most states don’t take the three-tier system to the absolute. Each state, and the Federal government has reasonable exceptions for small business. Note the statement from the North Carolina [“Distribution Agreement Filing Form”](#)

“North Carolina has a strong three-tier system in place. Simply stated, this means that the company (supplier) wishing to sell products in NC (first tier) may sell and ship only to wholesalers (second tier) in this State. The wholesalers may sell only to retailers (third tier) or other wholesalers. The type of ABC permit that your company holds to do business in NC determines whether or not your company must file Distribution Agreements according to NC Franchise Laws.”

North Carolina is very “emphatic” about following the three-tier system. However, they **require** every winery to hold a wholesale license as a key element of maintaining the three-tier system. Popular North Carolina wine brands ["Biltmore"](#) and ["Duplin"](#), currently on Alabama shelves, are shown as holding a North Carolina wine wholesale license along with a number of other available licenses. North Carolina offers four(4) winery licenses - Wine Producer, Unfortified Winery, Fortified Winery, and Limited Winery. Additionally, the state offers a “Bottlers” license.

It does appear that Colorado, a regulated state, may have a less complicated and more easily implemented winery license structure than North Carolina. Colorado offers two(2) winery licenses – a manufacturer’s license (winery) and a limited winery license. Limited winery privileges are generally included with the originating license.

State’s also set a minimum level of commercial activity before requiring or enforcing franchise wine laws. North Carolina does not require a distribution agreement until winery actually supplies or ships more than 1,250 cases of wine.

Licensing

Referencing Table 1.1, Alabama has fewer Federal TTB licensed wholesalers as a percentage of beverage alcohol sold. This indicates a concentration of business types as compared to other states. Actually, a “barbell” structure with “industrial” scale business on one end, and essentially local “micro” business on the other.

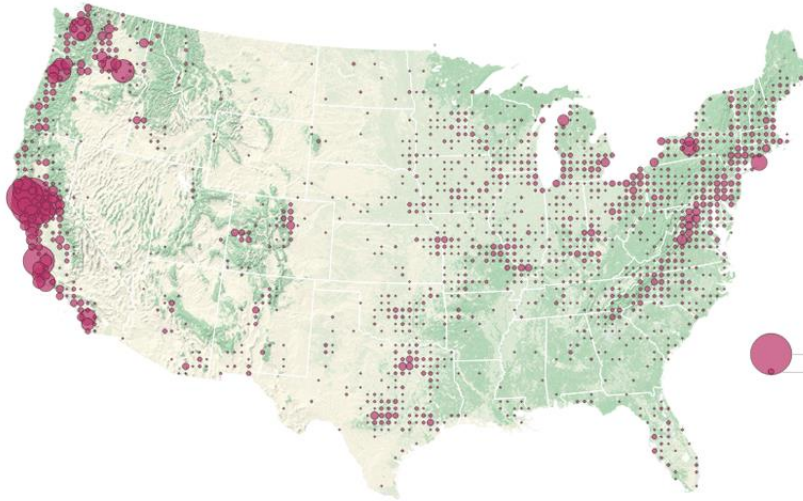
Additionally, Alabama wineries pay abnormally high license fees for the fewest privileges. After adding local fees, some wineries currently pay \$1,500 yearly. California has a graduated license structure based on the previous year’s production. A California winery producing less than 100,000 gallons per year pays the state \$219.

Forty-six(46) states have license structures that provide small wineries a pathway to retail wine shelves without requiring a third-party wholesaler. North Carolina and Colorado both do so. Only a single control state, Alabama, does not have formalized code addressing self-distribution. [U.S. State SD](#)

Of the 6,565 Federally licensed and bonded wineries only forty-one(41) operate in states that do not recognize self-distribution or have a provision of any kind to address this issue. What appears to be a “universal” right is denied in Alabama(19), Delaware (3), Louisiana (12) and Nevada (7).

Benchmark state licensing laws have been validated in Federal court cases. Rulings have defined how a state can structure laws recognizing small beverage alcohol manufacturers.

Commercial licensing, manufacturing and wholesale, is done at the state level in North Carolina and Colorado.



Alabama Wine Industry

Industrial manufacturers and their supply-chains dominate Alabama’s “micro” wine business. Major producing states – California, Washington, North Carolina, and others – have in place winery legal structures including self-distribution and additional privileges denied in Alabama. This affords California, Washington, and North Carolina wineries an opportunity to achieve economic scale and to consider exporting wine.

Additionally, imported wine accounts for almost 35 percent of all wine consumed. Today, the Federal government allows a domestic wine wholesaler/importer to own foreign wineries or breweries or distilleries, and to import, market, and distribute these brands effectively defeating the three-tier system as applied in Alabama.

Most recently in 2013, a Gallo controlled wine and spirits logistics warehouse began operation in Ensley, Alabama. According to the TTB annual wine report for Alabama, over 9.6 million gallons of wine moved out of Alabama logistic warehouses in 2014. These warehouses are again controlled by industrial scale wine manufacturers using railcar shipping to deliver wine at the lowest cost.

Since the repeal of the Alabama Native Farm Wine Act in 2001 there has been no detailed legal description of what an Alabama winery is. No local fruit content, no vineyard or orchard requirements, and no production volume limitations. While

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all hold a Federal Bonded Winery license, and also hold an Alabama ABC Class 200 – manufacturers license -- there is no one size fits all Alabama winery business.

Of the 19 licensed wine manufacturers, a number have no vineyard at all, others do have substantial vineyards, most have modest vineyards, purchase fruit or juice concentrates for winemaking, some buy bulk wine, and a number have family members holding wholesale licenses. A few also operate a distillery or a restaurant. One first mover winery with captive family distribution has achieved substantial sales volume. Again there is no one size fits all Alabama winery.

Municipal License & Excise Tax Payment

Simplified licensing and excise tax payment at the municipal and county levels appear to be key to a greater number of licenses. Commercial licenses issued at the state level, with all excise tax payments made to the state.

It appears that Colorado and North Carolina have modest local license fees, and collect all excise tax at the state level. Reference North Carolina:

§ 105-113.79. City wholesaler license. A city may require city malt beverage and wine wholesaler licenses for businesses located inside the city, but may not require a license for a business located outside the city, regardless whether that business sells or delivers malt beverages or wine inside the city. The city may charge an annual tax of not more than thirty-seven dollars and fifty cents (\$37.50) for a city malt beverage wholesaler or a city wine wholesaler license. (1985, c. 114, s. 1; 1998-95, s. 21.)

Alabama municipal licensing regulations are not being followed. Most Alabama municipalities are denying a \$100 “delivery license” to any wholesaler selling less than \$75,000 annually within the city and not located within the jurisdiction. Instead they force a small wholesaler to purchase a license costing \$300 to \$400. This license is reserved for a wholesaler located in the jurisdiction or selling over \$75,000 annually. This effectively serves to increase cost and to block small brands from reaching many Alabama store shelves.

Legislation addressing this is needed for any small wine wholesale, farm winery, wine festival or any privilege provided that allows a winery to travel across local jurisdictions.

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Section 11-51-105 of the Code of Alabama states that a municipality cannot charge a fee for farmers or those engaged in the production of “farm products.” Further, Section 11-51-194 describes a “delivery license” costing \$100 that must be offered to any business located outside of the city limits and selling less than \$75,000. We believe this provides a legal structure for navigating these issues.

Viticulture and Marketing

States that are generating local jobs, investment, and tourism appear to have in place “even-handed” laws plus viticulture and marketing programs. The state of Colorado operates under the ["Wine Industry Development Act"](#) collecting one cent per liter of all wine sold in support of viticulture research and development, and also for promotion and marketing of Colorado wines through a formalized board.

A similar Alabama program would collect approximately \$270,000 to \$300,000 annually.

“Even-Handed” Winery Code

In many regards, current Alabama laws defers to the Federal government in the manufacture and labeling of wine. The Federal code does not require a bonded winery to hold a wholesale license to sell its own wine.

We have provided Federal appeals court documents to the Committee, and Attorney General Strange also has a copy of the Maine case. We hope to avoid “pitched” battles over subjects that been considered and resolved in most states already.

[Granholm v. Heald](#) validated a states right to use the three-tier system but also found that the state discriminated against out of state wine shippers. Before the Supreme Court ruling and after the Supreme Court ruling, Michigan wineries enjoyed self-distribution privileges.

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[*Cherry Hill Winery v. Baldacci*](#) - A state can require any similarly situated U.S. winery to first have a location or tasting room prior to enjoying any privileges afforded in-state wineries. Maine has a 50,000 gallon limit. These include filings in support of Maine's law by the Attorney General of Alabama, National Beer Wholesalers Association, and Wine and Spirits Wholesalers of America.

[*Black Star Farms v. Oliver, ---F.3d--- \(2010 WL 1443284, 9th Cir., 2010\)*](#) Further validated winery production limits as a means to provide privileges. An out of state winery producing more than 20,000 gallons sued for privileges afforded to all U.S. wineries by Arizona producing less than 20,000 gallons. [U.S. District Court](#)

Alabama Legislation

During this past 2015 legislative session, SB381 and HB220 were filed on behalf of Alabama wineries. The [full text](#) and a state [benchmark state](#) analysis is available.

Key elements of small beverage alcohol manufacturer license:

- Limited manufacturer license based on production limits.
- License cost based on units sold the previous year.
- Self-distribution either as part of the originating license (CO) or through a "limited" wholesalers license held by the manufacturer (NC)
- Simplified municipal licensing and excise tax payment structure
- Additional sales outlets or tasting rooms
- Wine festivals and farmers markets including tasting and sales
- Purchase and sale of other "limited manufacturer" products at wholesale including beer, wine, and spirits for private events and at sales outlets
- Viticulture support and marketing with uniform signage support programs (Colorado Wine Industry Development Act)
- Minimum distribution requirements to qualify for commercial sales and also be subject to franchise laws. (North Carolina Distribution Agreement Form)
- Uniform excise tax rates on beverage alcohol products at the same volume alcohol percentage – beer, cider, wine, and spirits.

WINERY QUESTIONS – NC / CO / AL

1. What volume of wine sold is considered a commercial sale? Do other states have a minimum winery sales volume requirement before being subject to franchise rules? North Carolina appears to set that volume at 1,250 cases.
2. Do Colorado and North Carolina license and tax wine manufacturers at the municipal level? What is the license cost?
3. Is liquor excise tax paid at the municipal, county and state levels or to the state only?
4. Do Colorado and North Carolina issue “commercial” licenses from a central state location?
5. What are the requirements for local in-state fruit content? How is that accounted for?
6. Do these states have any agriculture policy or funding for state viticulture development? Or marketing programs?
7. How many winery license types do they have, and how are they different?
8. Uniform excise tax rates across – beer, wine, and spirits? Today in Alabama 12.7% beer, wine, and spirits each have a different tax rate.
9. How does the Alabama municipal license code structure for wine wholesale, delivery, and farm products compared to other states?
10. Do the benchmark states allow a wholesaler to purchase permanent display racks to effectively control retail access? What is the policy if any?
11. Can a winery tasting room purchase other beverage alcohol for on-premise or off-premise consumption? If so, are there any limitations?

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REFERENCE DOCUMENT ACTIVE LINKS

CONTROL STATES:

ALABAMA**

[Idaho Winery Wholesale](#)
[Iowa Native Wines](#)
[Maine Farm Winery**](#)
[Maryland Small Winery](#)
[Michigan Wine Maker](#)
[Montana Winery**](#)
[NC Unfortified Winery](#)
[NC Fortified Winery](#)
[NC Limited Winery](#)
[NC Wine Producer](#)
[NC Bottler](#)
[Ohio Winery](#)
[Oregon Winery**](#)
[Vermont Retail](#)
[Virginia Winery](#)
[Virginia Wholesale](#)
[Washington Winery](#)
[West Virginia Winery](#)

CONTROL ABC:

[Mississippi](#)
[New Hampshire**](#)
[Pennsylvania](#)
[Utah Winery License](#)
[Utah Small Winery](#)
[Utah Type 5 Package](#)
[Utah Type 5 Holders](#)
[Wyoming](#)

TTB LINKS

[Federal Licensees](#)
[TTB Wine Wholesale](#)

[Wine Production 2014](#)
[Wine Production 2013](#)
[Wine Production 2012](#)

REGULATED STATES:

[ALASKA](#)
[ARIZONA](#)
[ARKANSAS](#)
[CALIFORNIA](#)
[COLORADO](#)
[CONNECTICUT](#)
[DELAWARE**](#)
[FLORIDA](#)
[GEORGIA](#)
[HAWAII #16](#)
[ILLINOIS](#)
[INDIANA](#)
[KANSAS](#)
[KENTUCKY1](#)
[KENTUCKY2](#)
[KENTUCKY3](#)
[LOUISIANA**](#)
[MASSACHUSETTS](#)
[MINNESOTA](#)
[MISSOURI](#)
[NORTH DAKOTA](#)
[NEW MEXICO](#)
[NEVADA**](#)
[NEW JERSEY](#)
[NEW YOR FARM](#)
[NEW YORK WINERY](#)
[OKLAHOMA](#)
[RHODE ISLAND](#)
[SOUTH CAROLINA](#)
[SOUTH DAKOTA](#)
[TENNESSEE](#)
[TEXAS](#)
[WASHINGTON D.C.](#)
[WISCONSIN](#)

LICENSE & EXCISE TAX

[North Carolina Code](#)
[NC County & Municipal](#)
[Colorado License Fee](#)
[NC Raleigh License](#)
[NC Durham License](#)

ENSLEY WAREHOUSE

[G3 Enterprises-AL](#)
[SaddleCreek - Ensley](#)
[SaddleCreek Opens](#)

OTHER LINKS

[Mississippi Wholesale](#)
[Nation of Wineries](#)
[Native Wine Act Ch 28 - 6](#)
[Alabama Supreme Court 2003](#)
[NABCA Association.](#)
[Maine Federal Court](#)
[Maine FEDERAL BRIEFS-](#)
[Maine Alabama brief](#)