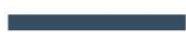




KANSAS FARM WINERY REPORT



2024 LEGISLATIVE REPORT



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Overview

In Senate Bill 25, the 2023 Kansas Legislature tasked the Kansas Department of Agriculture to assess the status and issues surrounding regulation of Kansas’ farm wineries. The purpose of this report is to fulfill the statutory request through an examination and analysis of the Kansas grape and wine industry.

Kansas has a rich history of growing grapes and producing wine. By the end of the 19th century, around 80% of U.S. wine originated from modern-day western Missouri and eastern Kansas. When Prohibition took effect, vineyards and wineries decreased. Strict alcohol production and sale laws remained even after prohibition was repealed, preventing the industry from rebounding in the decades to follow. In 1983, Kansas passed the Kansas Farm Winery Act, which established guidelines for farm wineries and allowed for wine to once again be produced in Kansas.

Today, there is an estimated 566 acres of grapes in Kansas between independent vineyards and estate wineries. Independent vineyards produce grapes without association with a winery, while estate wineries directly own and manage vineyards for their own benefit. Seventy different varieties of bearing grapevines can be found in 40 Kansas counties. In 2022, approximately 1,036 tons of grapes were harvested from these vines, with the vast majority going into the wine supply chain. Overall, winemakers reported 106,163 gallons of wine produced in Kansas for the 2022 vintage year.

For support, the Kansas Grape and Wine Industry Advisory Council was created in 1988 to advocate for the wine industry at the state level. Since administrative supports sunset for the council in 2016, two separate supporting associations have stepped in for the industry. For education, the industry has Highland Community College’s technical certificate programs for both viticulture and enology, along with indirect support from other related university programs.

Agritourism attracts residents and visitors to participate in activities on working farms, ranches, lodges, outfitters, wineries and other agricultural operations. There are currently 41 wineries and vineyards that are registered for agritourism in the state. For a farm winery to be considered agritourism, the Kansas Department of Revenue requires them to grow grapes on the same location as the winery so individuals can experience the vineyard and learn about the winemaking process. While a farm winery may have a tasting room, this alone is not enough to be considered agritourism.

Awareness of the legal landscape for farm wineries is essential for businesses and policy makers to understand the full breadth of the wine industry in Kansas. Just as any business, tax implications are an important consideration for farm wineries. This report will go into the current law around property taxes and the issues arising around how to classify farm wineries for property tax assessments. Next, it will analyze Kansas’ excise tax laws, as well as compare how other states have structured their property tax and excise tax laws.

Due to its history and the interstate nature of the wine industry, wine regulation is shared by both the state and federal government. This report will analyze issues and legal obstacles around labeling and licensing for winemakers. Importantly, while states must be careful with license requirements that treat out-of-state parties differently than in-state parties, states do have some latitude to regulate labels to clarify where a wine originates. A winemaker may not label their wine with any appellation—or place—of origin they desire. One appellation of origin that has been used in other parts of the U.S. is an

American Viticultural Area (AVA). An AVA is an appellation that is viticulturally distinguishable from a surrounding area based on the unique geography or climate. Kansas does not currently have an AVA that covers any part of the state; however, an application to create an AVA within Kansas is in process.

A state's licensing structure is an essential business consideration for a farm winery, as it is a legal barrier to entry. A careful analysis discusses the advantages and disadvantages of the farm winery licensing structure in Kansas. Kansas liquor laws are dictated by the common three-tiered system that separates manufacturers, distributors, and retailers to prevent unfair coercion, market domination, and ensure product safety. However, the farm winery license gives farm wineries more flexibility than other licenses. Kansas fruit and honey producers that grow their own products have two options for producing and selling their wines: a producer's license and a farm winery license. A business that obtains a farm winery license is allowed to manufacture and sell their wine to a wide variety of establishments and customers as compared to other license holders. However, a farm winery may not manufacture more than 100,000 gallons of wine annually.

Liability concerns are inherent when starting and running a business. Two ways a farm winery may mitigate the impacts of liability is by obtaining liability insurance and registering as an agritourism activity. The benefits and reasons for obtaining both will be discussed. This section will finish with an analysis of how current statute limits how local governments may regulate agricultural property. The general rule is that a county is authorized to adopt and enforce zoning and building regulations; however, this authority does not apply to land or structures used for agricultural purposes. Overall, current statute would indicate that local governments are not authorized to regulate most activities on agricultural property, and thus would not be liable or responsible for mitigating activities on agricultural lands.

To understand the context of Kansas wine in the national landscape, this report utilizes a comparative analysis to identify and categorize wine industries from eleven selected states by production and market characteristics. Based on this analysis, Kansas' wine industry currently resides within the "Emerging" states category. With the state's small production, low organizational support, lack of data, and small economic impact, the industry has room to grow acreage and improve the current system. In order to move up to the "Expanding" states category, in addition to a substantial increase in acreage and production, significant changes would need to occur to the current structure and industry support in place.

To see growth, Kansas' wine industry must leverage its strengths to overcome barriers and take advantage of opportunities in the future, as identified in the SWOT analysis (Strengths, Weaknesses, Opportunities, and Threats). Some strengths identified include passionate industry with engaged consumers, quality education and research, favorable agronomic conditions, and an ideal environment for agricultural prosperity. Unfortunately, there are more weaknesses than there are strengths, including lack of industry unity, the capital- and time-intensive nature of the industry, risk management concerns, lack of statewide marketing and promotion efforts, and minimal grower support. Externally, the industry sees incredible opportunity in consumer interest, trademark program, labeling incentives, business-friendly environment, and available funding for industry enhancement. However, it also sees threats from land access and urban sprawl, limited workforce, weather uncertainty, pest management and chemical drift, legal and tax conditions, and industry perception.

Overall, the Kansas grape and wine industry has a positive outlook but is faced with barriers both internally and externally.

Introduction

In Senate Bill 25, the 2023 Kansas Legislature tasked the Kansas Department of Agriculture to assess the status and issues surrounding regulation of Kansas' farm wineries. The purpose of this report is to fulfill the statutory request through an examination and analysis of the Kansas grape and wine industry.

The last formal statewide study on the Kansas grape and wine industry was completed in 2011 by Kansas Agricultural Statistics and the U.S. Department of Agriculture's National Agricultural Statistics Service (USDA NASS). The Grape and Wine Industry Advisory Board presented the full report to the Kansas Legislature, including findings from a USDA NASS survey funded by a 2009 USDA Specialty Crop Block Grant awarded to the Kansas Department of Agriculture. The survey gathered valuable data about the different grape varieties grown in the state, the different fruits used to make wine, the type and amount of wine produced, the level of tourism tied to grape and wine production, and other economic data.

History and Context

Kansas has a rich history of growing grapes and producing wine. In the 1800s, European immigrants traveling west began establishing vineyards along the Missouri River. Modern-day western Missouri and eastern Kansas became a wine mecca as native and French varieties flourished under the experienced watch of these viticulturalists. Around 80% of U.S. wine originated from this region by the end of the 19th century. In 1900, there were over 5,000 acres of vineyards in Kansas. Most of this acreage was concentrated in the northeast and near urban centers, with the counties of Wyandotte (583 acres), Sedgwick (404 acres), and Doniphan (351 acres) leading at the turn of the century. Successful wineries and support businesses such as rootstock breeding thrived alongside. However, the temperance movement changed the industry's trajectory. In 1880, Kansas was the first state in the union to pass a state constitutional amendment prohibiting the manufacturing and sale of alcohol, as well as subsequent laws creating misdemeanors for its manufacture. Producers endured this environment by selling their grapes out of state or producing wine clandestinely. Once the Volstead Act and Prohibition took effect nationally, vineyards drastically decreased as the production of wine also declined in Kansas. After federal Prohibition ended in 1933, Kansas retained constitutional prohibition for 15 more years. Strict alcohol production and sale laws remained even after prohibition was repealed in the state, preventing the industry from rebounding in the decades to follow. In 1983, Kansas passed the Kansas Farm Winery Act, which established guidelines for farm wineries and allowed for wine to once again be produced in Kansas. The state began to slowly return to the wine industry, with 13 licensed farm wineries producing grapes on 170 acres by 2005. Production has continued to grow since.

Producing wine is a complex mix of science and art. Wine can be produced from a variety of different fruits and vegetables, but it is most commonly made from grapes. After the commodities are harvested and transported to the winery, they are placed first into a destemmer to separate the stems from the fruit, followed by a crusher to isolate the juice from the skins and flesh. After pressing, yeast is added to the juice to begin fermentation. The juice is then placed into barrels, tanks, or bins with additional ingredients for the aging process. After the wine is aged based on winemakers' goals for the commodity type and variety, the wine is bottled onsite. The finished wine stays in a bonded state and cannot be delivered for consumption until a value added tax is applied. After being properly taxed, Kansas produced wine is commonly sold in retail stores via the three-tier distribution system, at tasting rooms directly to the consumer, or through online markets.

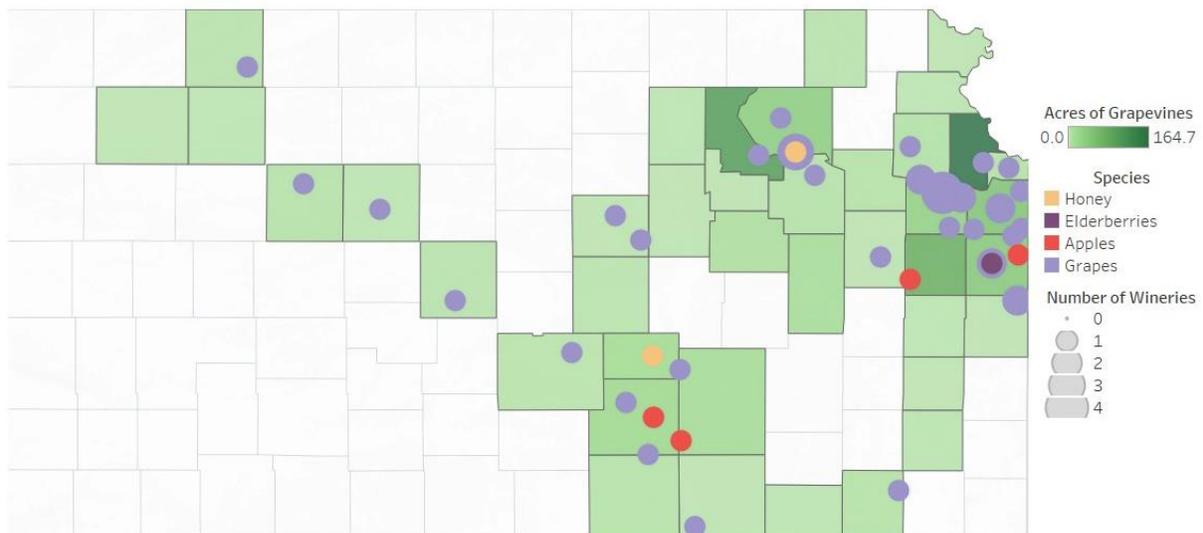
Current Industry Status

The Kansas wine industry has seen a revival over the last few decades as it has slowly rebounded. The current industry is mostly composed of vineyards and wineries producing grapes and wine, respectively. Typically, these two groups function as separate entities which conduct business with each other, focused on either production or manufacturing. While a vineyard solely produces grapes, a farm winery may also grow grapes onsite in addition to making wine. To gauge the current status of the industry, the Kansas Department of Agriculture conducted research, interviews, and surveys focused on production and manufacturing of wine in the state. Inputs, distribution and retail are beyond the scope of this report but play a significant role in securing markets for winemakers.

The most complete wine grape production data from the last few decades comes from USDA NASS. According to the 2017 Census of Agriculture, there were 433 acres of vineyards on 148 operations in Kansas. Of these, roughly 350 were bearing a harvest at the time of the census. During the prior survey in 2010, Kansas reported 342 acres of grapes bearing 355 tons, revealing a 26% increase in acreage over seven years.

Today, there is an estimated 566 acres of grapes in Kansas between independent vineyards and estate wineries. Independent vineyards produce grapes without association with a winery, while estate wineries directly own and manage vineyards for their own benefit. Seventy different varieties of bearing grapevines can be found in 40 Kansas counties. In 2022, approximately 1,036 tons of grapes were harvested from these vines. The average yield for the year was 1.94 tons per acre from all vineyards, ranging from less than 1 to 5 tons per acre. The vast majority of this harvest went into the wine supply chain. Overall, winemakers reported 106,163 gallons of wine produced in Kansas for the 2022 vintage year.

Figure 1: Kansas Wineries and Vineyards



Vineyards

Vineyards are essential to the wine industry in Kansas. At its most basic definition, an independent vineyard is a farming operation that produces grapes without ownership from or association with a winery. These operations resemble a traditional crop farm in business structure and decision making, but they most closely share characteristics with other specialty crop producers in the state. Grape

growers maintain perennial vines throughout the year and harvest a crop between August and October. The vast majority of the grapes produced are sold to Kansas wineries or kept for personal use. Vineyards supply in-state wineries, rarely shipping Kansas grapes outside the state. As grape growers are not licensed, any wine directly produced by these vineyards is for personal use only and not sold commercially.

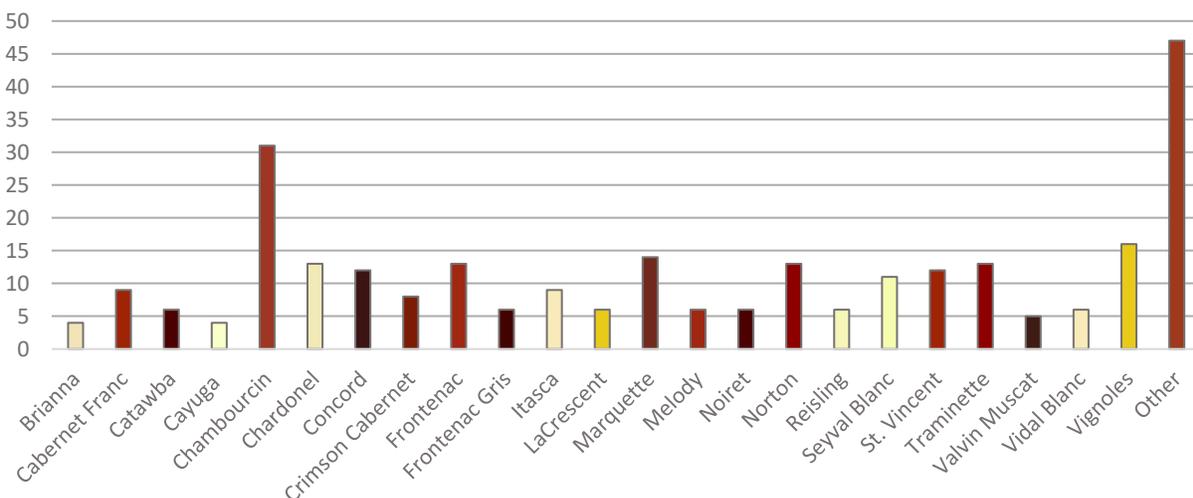
Based on outreach and research, there are at least 61 independent vineyards scattered across 31 counties, with the vast majority in eastern Kansas (Figure 1). The most vineyards are clustered within Johnson County. A small portion of vineyards are sprinkled throughout the rest of the state. Vineyards do not have to be licensed to grow grapes in Kansas, so it is difficult to identify and accurately track all in the state. Therefore, more vineyards may exist that are not included here.

Of those that responded to the survey, independent producers reported growing approximately 124 acres of grapes in 2022. The average size of these vineyards is 2.40 acres, with the largest recorded at 23 acres. Generally, producers with more than three acres marketed their grapes for sale. Several producers reported counts of individual grapevines, resulting in 13% of responses with less than 1 acre of grapes reported. These vineyards were often utilized for personal use instead of commercial uses.

Based on survey results, each vineyard respondent grows an average of five different varieties. The smallest number of varieties reported to be grown is one, while the most varieties grown in a single vineyard is 17. The most popular variety reported is Chambourcin, the state red grape, followed by Marquette and Frontenac. Vignoles, the state white grape, is one of the more prominent varieties produced but not nearly to the degree of some other varieties. (Figure 2) Overall, French-American hybrids dominate the market as the most popular species grown in Kansas, with 48% of vineyards reporting growing this species. French-American hybrids dominate the market because of their ability to thrive in Kansas’ climate and withstand the harsh winters.

On average, respondents harvested 1.63 tons of grapes from each independent vineyard. The largest vineyard harvested seven tons in 2022, and the smallest reported harvest reached 0.25 tons. Overall, producers harvested a total of 50.50 tons of grapes in 2022, or 100,965 pounds. Average yield came out to 1.84 tons per acre for independent vineyards, with a range between 0.05 and 5.00.

Figure 2: Grape Varietals Grown by Vineyards, 2022



Wineries

To turn these grapes to wine, wineries are the vital next step in the supply chain. A winery is a business that produces wine from grapes, fruit, vegetables, or honey. They may source their commodity inputs from brokers, independent vineyards, or grow their own. While growing the commodities utilized in the winemaking process is not a requirement, wineries often maintain their own vineyards or orchards as “estate” property. The wine produced from these fruits may be labeled as an “estate wine.” As these properties are controlled and utilized for a winery’s benefit, they are distinctly different from independent vineyards.

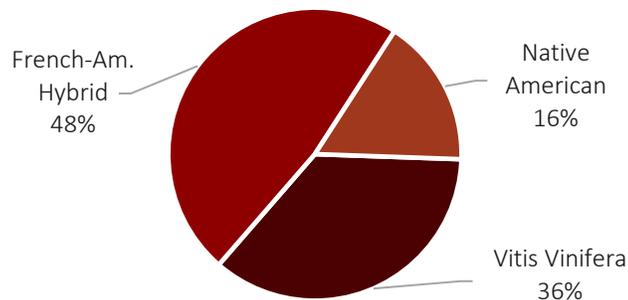
A winery licensed to both produce up to 100,000 gallons of wine annually and sell wine directly to the consumer is considered a farm winery. In Kansas, the term “winery” is synonymous with farm winery, as no other type of wine production license is commonly utilized in the state. This ultimately refers to businesses crushing traditional wine made from grapes, but the license also includes businesses producing cider, a fermented fruit drink usually created from apples, and mead, or honey wine. Farm wineries specifically make wine for sale direct to the consumer, but a significant portion also produce grapes on their own estate for wine production. As of 2022, there are currently 42 registered farm wineries in Kansas.

Kansas farm wineries are based in 23 different counties, with the highest number centered in Douglas County (Figure 1). The vast majority are found in northeast and south-central Kansas. The wineries tend to be located toward more densely populated areas, where they are more likely to experience additional business. There are very few in the central and western parts of the state.

From the survey results, there are approximately 392 acres of farm winery estate vineyards growing grapes in Kansas as of 2022. Respondents maintained an average of 13.48 acres of grapes, with the largest at 100 acres and the smallest around 0.50 acres. Of the winery respondents, 9% stated they had no vineyards associated with the winery, choosing instead to source grapes elsewhere.

On average, each winery respondent grows eight different varieties. The largest estate vineyard grows seventeen varieties, while the smallest grows only one variety. The most popular varieties grown are Chambourcin, Vignoles, Marquette, and Traminette. The red grape varietals are more popular among the wineries, specifically French-American hybrids developed to withstand Kansas’ climate. (Figure 3)

Figure 3: Percentage of Grape Species Grown by Wineries, 2022



The number of cases produced annually varies between individual wineries. While there were limited responses, the average number of cases reported was 2,093 cases, with a range from as few as 250 cases to a high of 10,000 cases. When combining numbers from all the respondents, they produce almost 33,500 cases of wine per year. This translates into approximately 79,660 gallons of wine solely from survey respondents. Based on license reporting for 2022, there was a total of 109,107 gallons produced in Kansas, or roughly 259,456 cases.

When it comes to marketing, social media is by far the most popular way that wineries report marketing wine. Most of the wineries also have a tasting room where they showcase their wine. Since farm

wineries can sell direct to consumer without using a distributor, these marketing strategies are crucial. Additionally, wineries report utilizing word of mouth, liquor store sales, and print ads as significant marketing strategies for their operations.

Based on the legal definition, meaderies and cideries are registered as farm wineries and are included as niche operations in the Kansas wine industry. Hard cider is considered a white wine, while mead is recognized as a honey wine. There are only a couple meaderies in the state, and there was no survey feedback from those entities. However, there was some minimal feedback from the cideries. The respondents reported growing a total of 15 acres of apples, a portion of which is used to make cider. There were 1,500 gallons of hard cider produced and documented in 2022.

Industry Support and Education

The industry has seen many changes in support over the last few decades. In 1988, the Kansas Grape and Wine Industry Advisory Council was created with the enactment of K.S.A. 74-551 through 74-553. Board members were appointed by the Kansas Secretary of Agriculture and consisted of a nine-member body which advocated for the industry at the state level on issues and opportunities. Since administrative supports sunset for the council in 2016, two separate supporting associations for the wine industry have been created. While both associations provide support for the wine industry, the Kansas Viticulture and Farm Winery Association focuses on the grape growing portion of the industry, while the Kansas Grape Growers and Winemakers Association puts emphasis on winemaking. Both associations look to further the growth and economic development of the wine industry.

Within the state, there are different educational institutions that support the growth of the wine industry. Highland Community College (HCC) offers a technical certificate program for both viticulture and enology that started in the fall of 2010. This program not only teaches students how to grow grapes, but it also teaches on the nuances of how to make wine. Alongside the technical certificate program, HCC conducts a variety of industry research around their Wamego, Kansas, location. HCC has a trial site that tests the growth of commercial grape varieties that are not common to Kansas in addition to vines that are not yet commercially available. Although not specific to grape growing, Kansas State University has a commercial horticulture program that focuses on growing the specialty crop sector of Kansas agriculture. The commercial horticulture research team focuses their specialty crop research on emerging pre- and post- harvest technologies as well as modern production practices to help maximize production.

Agritourism

With connections to the wine industry, agritourism plays an integral role in educating the public about the importance of agriculture. According to Kansas Tourism, there are currently 41 wineries and vineyards that are registered for agritourism in the state. The Kansas Agritourism Promotion Act was signed into law in 2004. The purpose of the Act is to promote the growth of the agritourism industry in Kansas. The Act deems agritourism activities as “any activity which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including, but not limited to, farming activities, ranching activities, or historic, cultural, or natural attractions.” Agritourism attracts residents and visitors to participate in activities on working farms, ranches, lodges, outfitters, wineries and other agricultural operations. These activities might include outdoor recreation, educational experiences or opportunities to shop, dine or stay in Kansas, all while supporting Kansas agricultural producers. These activities help to sustain the rural way of life and keep more producers on Kansas lands.

The Agritourism Program under the Kansas Department of Commerce is a non-regulatory program that provides benefits to producers such as marketing and limited liability protection, as well as access to numerous resources. Registering an agritourism business is a free service provided by the state. Registration is a simple process that can be done online and renewed every 5 years. To determine which businesses qualify and which ones do not, Kansas Agritourism utilizes the state statute K.S.A. 32-1432 definition of agritourism. To qualify for the program, a farm winery must provide some type of visitor activity or experience directly related to agriculture or farm life. They must also currently market these experiences on a website and/or social media page so that visitors are aware of the opportunities they can experience in Kansas.

For a farm winery to be considered agritourism, the Kansas Department of Commerce requires them to grow grapes on the same location as the winery so individuals can experience the vineyard and learn about the winemaking process. While a farm winery may have a tasting room, this alone is not enough to be considered agritourism. Based on feedback from industry stakeholders, farm wineries may also qualify as agritourism destinations by providing the following services: vineyard tours, fruit picking, farm stays, wine sampling, being a rural destination, or having an on-site petting zoo of farm animals.

Legal Status

Awareness of the legal landscape for farm wineries is essential for businesses and policy makers to understand the full breadth of the wine industry in Kansas. Aside from the business considerations, starting a farm winery requires an entrepreneur to analyze licensing requirements, determine the proper business entity, prepare contracts, understand tax obligations, obtain insurance for different risks and liability concerns, and abide by other state laws to function as a business. This section analyzed a few specific legal areas of importance for farm wineries in Kansas. The areas analyzed below include property and excise taxes; state licensing and wine labeling considerations; and liability concerns.

Taxes

Just as for any business, taxes are an important business consideration for Kansas farm wineries. There are two tax considerations that have considerable business impacts for farm wineries that are discussed below: property tax classification and excise taxes.

Property Taxes

Kansas

Property tax classifications are important to farm wineries, as tax assessments vary significantly between the different property classifications. Kansas outlines the State's property tax classifications in the Kansas

Constitution, Section 1 of Article 11. K.S.A. Const. Art. 11, § 1. Like other states, Kansas classifies "land devoted to agricultural use" as a separate classification from residential, commercial, and industrial uses under Class 1 real property. The Kansas Constitution provides two subclasses for agricultural land: "land devoted to agricultural use" and "real property used for commercial and industrial purposes and buildings and other improvements located upon land devoted to agricultural use." The benefit of an agricultural classification comes with a lower tax assessment than the other property classifications. While the other classifications are taxed on the value of the property, tax assessments for land devoted to agricultural use are based on the agricultural income or productivity. This is not the same for real property used for commercial uses on agricultural property, as that is taxed based on the fair market value of the property. The legislature defines "land devoted to agricultural use" for tax purposes in K.S.A. 79-1476 to broadly include "land...devoted to the production of plants, animals, or horticultural products, including, but not limited to...bees and apiary products...fruits, nuts and berries..." Additionally, this definition includes lands devoted to growing plants, livestock, and horticultural products that are "incidentally used for agritourism activity." "Agritourism activities" as used in the property tax context has the same definition as found in K.S.A. 32-1432.

While many properties only have one purpose, there are some where multiple activities may occur on a parcel of land, such as a farm winery. Thus, the question arises: how is a parcel with multiple uses taxed? Kansas law does allow multiple uses on a parcel of land. The county assessors are tasked with the authority to assess the parcel on its highest and best use; however, county assessors must assess agricultural property based on the actual physical use of the land. Statute does require that when agricultural properties also include residential or recreational, the primary use of the property controls the property tax classification. Additionally, the Kansas Constitution allows the county assessors to assess real property with commercial or industrial uses located on agricultural property with a separate

Legal Authority

Property Taxes

Const. Art. 11, Section 1 & 12

In re Protests of Oakhill Land Co., 46

Kan.App.2d at 1115

Excise Taxes

K.S.A. § 41-310(j)

K.S.A. § 41-350

K.S.A. § 41-501

K.S.A. § 79-4101(a)(2)

subclass assessment. In these cases, the county appraiser has the authority to decide “the amount of the parcel used for agricultural purposes...then determine the amount of the remaining land used for such other purposes.” The parcel is then valued and assessed according to the acres used for agriculture and those used for the other uses. Overall, all land within the boundaries of a single agricultural operating unit is to be classified as land devoted to agricultural use unless clearly defined areas within those boundaries are primarily used for recreational, commercial or residential purposes.

Currently, while it is assumed that a farm winery would fall under the agricultural property classification, there are questions about the accuracy of that classification. The question has been whether the processing and selling of wine is included as the production of an agricultural product and included in the parcel with other agricultural uses—such as growing grapes in a vineyard or other fruits in an orchard—or if it is commercial since the wine is being sold for a commercial purpose. Farm wineries are not explicitly included in the statutory definition of “land devoted to agricultural use.” However, the growing of fruits and bees are in the statutory definition. The confusion around farm winery classification appears when a farm winery grows grapes or other fruits, as well as processes and sells wine in facilities on the same premises. The county assessors are tasked with the question of whether to split the parcel between the commercial buildings and the portion of the parcel used for agricultural use or if the entire parcel must be assessed as agricultural land.

In order to classify property as “devoted to agricultural use,” at least some actual agricultural activity must be taking place. The current statute includes a non-exhaustive list of agricultural crops and activities, which could indicate that the legislature would want the statute to be interpreted broadly.¹ Farm wineries could qualify if they grow the grapes, fruits, or honey used in their wines on the property. The processing of grapes or other fruits into wine on the premises may be determined an agricultural activity, as this process is the logical progression of producing a final agricultural product from vine to wine. However, with the subclassification (a)(6) found in the Kansas Constitution in Article 11, Section (1), there is an allowance for a parcel to be split between the commercial uses and the agricultural uses. There is an additional layer of analysis when the agritourism registration for a farm winery is included because agritourism is explicitly determined in statute to be considered agricultural property for property tax purposes. When the farm winery has an agritourism registration, the parcel would be assessed as land devoted to agricultural use per statute. However, there is a question of whether the statute allows for the entire entity registered for agritourism is covered or if the commercial part of the entity may be split from the agricultural activities. K.S.A. 79-1476 states that, “Land devoted to agricultural use’ shall include land otherwise devoted to the production of plants, animals or horticultural products that is incidentally used for agritourism activity.” Thus, is there a difference between a building housing the processing equipment that produces a product made from fruit and sells the final product and the rest of the parcel where that fruit is grown?

This analysis does not apply when the farm winery is on a parcel that does not have other agricultural uses, as that parcel would be assessed as commercial property.

Other States

In analyzing what is covered under the Kansas agricultural property classification, it might be equally helpful to see how other states define agricultural lands and whether they include vineyards and farm wineries. Most states include general crops and produce, like Kansas. However, some states—like Ohio

¹ K.S.A. 79-1476

and Texas—specifically include viticulture, winemaking, and related activities in their agricultural property definition. Additionally, Ohio recognizes warehouses and toolsheds that are used to store barrels, winemaking equipment, and areas on the farm where events are hosted were covered by the agricultural property tax designation.² Another difference of note is that some states—including California and New York—exempt parcels growing certain crops that take longer to bear produce from property taxes for a certain number of years after planting (e.g., grape vines and fruit trees).

Excise Taxes

Kansas

Kansas Taxes on Wine = (\$0.75 / gallon of wine sold with more than 16% alcohol OR \$0.30 / gallon wine sold with 16% or less alcohol) + 8% liquor enforcement tax.

In Kansas, farm wineries are subject to two excise taxes: a gallonage tax and a liquor enforcement tax. These apply both to retail sales on the farm and to shipments of alcohol sent to consumers in Kansas. The gallonage tax is dependent on the percent alcohol in the product. If the product contains more than 16% alcohol, then it will be taxed at 75 cents/gallon. If the product contains 16% alcohol or less, then it will be taxed at 30 cents/gallon. The liquor enforcement tax applies to the gross receipts from the sale of alcohol to consumers within this state and has a rate of 8%. The liquor enforcement tax is a substitute for the Kansas sales tax. Additionally, cities and townships may tax farm wineries; however, they can only levy a biennial occupation or license tax on farm wineries, so long as the tax is less than the farm winery license fee, which is \$500.

Other States

Compared to other states, Kansas' excise taxes on the sale and production of wine are simple and a low burden on the industry. Each state is unique in what taxes and fees they assess on alcohol. Some states base their license fee on the amount of wine produced; some states have a uniform county and district tax; and some states have a graduated surcharge tax as the winery makes more wine. Notable differences between Kansas and other states include taxes that go to a fund that supports the state's wine industry and taxes that go to a fund for the development and marketing of state wines. Additionally, as an incentive for their wine industry, Missouri created a tax credit to offset 25% of the cost of new equipment that is used for processing grapes and producing wine. For a more extensive look into what other states include in their excise taxes on alcohol, refer to the legal section of the appendix.

State Authority Over Licensure and Labeling

Other state legislatures have faced additional issues and have dealt with legal obstacles in enacting certain laws. Generally, states have the right to enact laws over activities occurring within their boundaries, unless the law is unconstitutional or when federal law preempts state law.

21st Amendment and the Commerce Clause

The regulation of wine is shared by both the state and federal government. The U.S. Constitution is the supreme law of the land, and the states derive their authority to regulate wine through the 21st

² See *Dalton G. Bixler 2016 Trust v. Tuscarawas County Board of Revision*, 2023 WL 4572052 (2023).

Amendment; however, the states' authority is balanced by the federal government's authority to regulate under the Commerce Clause. Importantly, any federal or state laws that conflict with the Constitution are null and void.

The 21st Amendment ended prohibition and allowed the states to regulate the distribution and sale of liquors under a uniform system. However, while the 21st Amendment gives states this authority, it does not prevent the federal government from regulating liquor, nor does it supersede other parts of the Constitution. One of the Constitutional provisions limiting state authority is the Commerce Clause. The Commerce Clause gives Congress the authority to regulate interstate commerce between the states. Due to the interstate nature of the wine industry, the federal government has extensive authority to regulate the wine industry, including wine labeling.

The Commerce Clause limits the state's authority to regulate commerce that is outside of their borders or would impact interstate commerce, which is known as the dormant Commerce Clause. State laws violate the dormant Commerce Clause if they mandate differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter. In short, the dormant commerce clause prevents state protectionism. In other words, if the state law is meant to benefit in-state interests at the cost of out-of-state businesses, it would unconstitutionally discriminate against out-of-state businesses, whether intended or not.

In the past, many states have conditioned their farm winery licenses on the requirement that the wineries must manufacture wine using a majority or specific percentage of ingredients grown or produced in the state. This policy perceivably supports a state's domestic grape and fruit growing industry; however, there has been a recent trend with states removing the requirement after courts have found this requirement unconstitutional because it discriminates against out-of-state growers. While the state should advocate for their domestic industries, they cannot do that at the detriment of out-of-state interests. Recent cases out of Minnesota and the U.S. Supreme Court have confirmed this principle.³

Kansas licensing requirements are quite simple. To obtain a farm winery license, a business must do several things: submit certain documents confirming they can do business in Kansas and have an authorized agent; confirm the license holder does not have a beneficial interest in a manufacturer or a distributor license; and pay the \$500 biennial license fee and \$30 initial license application fee. Farm wineries are not required to grow the grapes or other fruits that go into their wines; however, many do. In the past, Kansas did have a statute requiring farm wineries to incorporate at least 30% of Kansas-grown products into their wines. The statute was amended to only require 15% of Kansas-grown products. However, the in-state ingredient requirement was be phased out in 2023, as found in K.S.A. 41-308a(c)(3). Thus, if further licensing requirements are considered, it is important to remember this example for what not to do.

Legal Authority

21st Amendment and the Commerce Clause

Kan. Atty. Gen. Op. No. 2018-13 (Kan.A.G.)

U.S. Const. Art. 1, Sec. 8, Cl. 3.

27 C.F.R. 4.32 (a)

27 C.F.R. 4.25(e)(1)(i)

27 C.F.R. 4.39(i)(2)(iii)

³*Alexis Bailly Vineyard, Inc. v. Harrington*, 482 F.Supp.3d 820 (D. Minn. 2020); *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 139 S. Ct. 2449 (2019); *Granholm, v. Heald*, 544 U.S. 460, 472, 125 S.Ct. 1885 (2005)

Federal Preemption

Labeling products provides transparency to the consumer, creating a brief connection between the consumer and producer. When a consumer picks up a bottle of wine and notices that it was produced in Kansas, the consumer may feel a sense of pride and support for their locally grown and manufactured product. However, there is a process behind that label. This process includes both federal and state laws and regulations. Generally, several federal agencies play a large role in the regulation of wine labels, including the U.S. Food and Drug Administration (FDA), the Federal Trade Commission (FTC), and the Alcohol and Tobacco Tax and Trade Bureau (TTB). For a deeper look into wine label laws, read *Behind the Label: Exploration of U.S. Wine Label Laws*, 21 *Virginia Sports & Entertainment Law Journal* 197.

Labeling laws and product restrictions are contentious at both the state and federal levels. When discussing labeling requirements, a legislature must first ask whether the federal statutes or regulations have preempted state laws. Federal preemption may bar states from passing laws concerning certain topics that congress or the federal agencies have already regulated. Federal preemption can occur in three ways: (1) when the federal government has explicitly said that federal law preempts state laws on a certain topic (explicit preemption); (2) when the federal government intends to occupy the regulation of a field of law exclusively (field preemption); or (3) when a state law creates a conflict or obstacle to executing a federal law (conflict preemption).

The TTB is the primary governmental entity that regulates wine labels. The TTB regulations are crafted with the intention to provide consumers with adequate product information and to prevent consumer deception. The federal regulations require certain information be included in every wine label. The brand label—which depicts the brand name and distinctive design—must include: (1) the brand name; (2) the class, type, or other designation of the wine (e.g., red wine, rose, dessert wine, etc.); and (3) the percentage of foreign wine, if the label says the wine contains a foreign wine. Further, generally somewhere on the label must include the following: (1) the bottler’s name and address; (2) the net contents in the bottle (i.e., 750 mL); (3) alcohol content; (4) whether the wine contains FD&C Yellow Dye Number 5; (5) whether the wine contains sulfites or sulfiting agents; and (6) a government warning statement required under 27 C.F.R. 16.21.

There are also certain discretionary items that wineries may decide to add to their labels or are only required in certain circumstances. These discretionary items include the vintage date, grape variety, and appellation of origin. A vintage date is the year the grapes making up the wine were harvested. The grape variety is the type of grape making up the wine (e.g., Cabernet Sauvignon, Merlot, Chardonnay). While this is not required on the label, winemakers usually provide this information because customers usually expect to see the grape variety. Finally, appellations of origin may be included on the label. Appellation means the specific area where the grapes were grown. Domestic wine labels typically contain the appellation of origin because it gives consumers information about where the grapes that were used to make the wine were grown. This may also be used to attract consumers who favor wines from a certain location.

It is important to note that a winemaker may not label their wine with any appellation of origin they desire. Wine grapes are among a very limited group of agricultural products that are recognized for taking on unique flavor characteristics resultant of the climate and soil typology of the areas in which they are grown. The appellation of the grapes is important in wine making because certain areas with favorable growing conditions are recognized for producing superior grapes for wine. Winemakers have many options when determining how to label their wine to designate the appellation of origin.

Winemakers may choose to label their appellation of origin in one of the following ways, from broadest to most specific: United States (or American); a state; a county; or a specific American Viticultural Area (AVA). 27 C.F.R. § 4.25(b) requires that the wine must contain 75% or more grapes or fruit from the appellation area indicated on the label. For example, a wine incorporating 75% or more of Kansas-grown grapes may label their wine with the appellation “Kansas.” Additionally, if the wine incorporates 75% or more of grapes grown in Johnson County, the appellation on the label may include “Johnson County” or “Kansas.” This is more contentious in California where areas—like Napa County—are protective of their appellation of origin because they are known for growing high-quality grapes for wines that consumers seek out.

An AVA is an appellation that is viticulturally distinguishable from a surrounding area based on the unique geography or climate. AVAs can be as small as a specific area in a county or state or they can be as large as encompassing parts of different states or a whole state. These labels protect consumers from misleading brand names that confuse or create a false impression of an appellation of origin. With an AVA, the appellation of origin would designate if the grapes were from Kansas or a certain growing area of Kansas. Kansas does not currently have an AVA that covers any part of the state; however, an application to create an AVA within Kansas is in process. The process for creating an AVA may be found in Part 9 of Chapter 27 of the Code of Federal Regulations. Additionally, a current list of AVAs can be found at the TTB website.⁴

When a federal law or regulation on a certain topic exists, state legislatures may be allowed to enact laws that are stricter than the federal law. The federal law allows the use of an appellation on a label if the wine is made from 75% or more of grapes grown in that appellation area. Alternatively, while the state may require a higher percentage, it may not require a percentage lower than the 75% federal limit. In the context of label laws, it is important to note that this would mainly ensure that labels are not deceptive to consumers. Labels have the propensity to bolster wines from certain areas, but only if the consumer is specifically looking for wine from that area.

California and Oregon have both passed stricter wine label requirements than the federal law. For example, Oregon’s wine label law requires the following:

If the appellation of origin claimed or implied anywhere on a wine label is “Oregon,” the name of one or more of its counties, or the name of an American Viticultural Area wholly within Oregon, then all grapes used in the production of the wine must have been grown in Oregon, and 95% of the grapes used in the production of the wine must have been grown within the defined boundaries of that appellation of origin.⁵

Thus, using Oregon as an example, if a winemaker wanted to use “Oregon” on their label, it would need to contain 100% of its grapes from Oregon. Further, if a winemaker wanted to use the Columbia Valley appellation of origin on their label, their wine must contain 95% of its grapes from the Columbia Valley and the other 5% of its grapes must all come from somewhere else in Oregon. Overall, when considering a label law, a legislature must balance the desire to promote their in-state vineyards through stricter requirements with the practical reality of whether the state’s vineyards can produce enough grapes to fulfill the needs of the wineries that desire to use the appellation of origin on their label. It is important

⁴ <https://www.ttb.gov/wine/established-avas>

⁵ OAR 845-010-0920(2).

to remind the reader that this requirement is allowed for labels, but not for licensing or selling requirements.

State Licensing for Farm Wineries

A state’s licensing structure is an essential business consideration for any industry, as it is a legal barrier to entry. However, that does not mean that all licensing requirements are overburdensome. The burden licensing puts on businesses may be low—such as when the process is a procedural hurdle—to high—such as when the licensing requirements demand onerous rule compliance, high fees, or documentation. After careful analysis, it can be argued that the farm winery licensing structure in Kansas does not create a high barrier to entry. Further, the straightforward licensing requirements and flexibility for farm wineries can be viewed as a benefit compared to other alcohol licensing structures. To be licensed, a farm winery generally must (1) submit an application and required documents to the Alcohol Beverage Control, (2) be 21 years of age, (3) be a U.S. citizen, (4) not be convicted of a felony, (5) affirm that the applicant does not have an interest in a

manufacturer or a distributor, (6) post and maintain a licensing bond in the amount of \$2,000, (7) pay the biennial license fee of \$500, (8) pay the initial application fee of \$30 or the renewal fee of \$10, and (9) possess a basic permit issued by the federal government. Once a business receives a farm winery license, they are allowed to manufacture and sell their wine to a wide variety of establishments and customers as compared to other license holders. However, a farm winery may not manufacture more than 100,000 gallons of wine annually. Farm wineries may hold many other licenses that can benefit their business, especially if they would like to expand to produce more than 100,000 gallons. This section does not address federal licenses or permits farm wineries must obtain in addition to state licenses and permits.

Kansas Three-Tiered Alcohol Structure

To better understand the benefits farm wineries enjoy, it is important to quickly lay out how Kansas organizes its liquor laws. Kansas liquor laws are dictated by the three-tiered system, a common system in many states. The three-tiered system for liquor licenses separates the different sectors of the supply chain to prevent unfair coercion or market domination and to ensure product safety. These three tiers are: manufacturers, distributors, and retailers. These three tiers are limited to who they can sell to and the business interests they may possess. Manufacturers which produce the alcoholic products are restricted to only selling their products to distributors. Distributors mainly purchase alcoholic products from manufacturers. Similarly, distributors are restricted to only selling to retailers or other distributors. Retailer license holders may purchase their products from different entities—including farm wineries—but receive the bulk of their products from distributors. Retailers are then allowed to sell the liquor to customers for off-premises consumption and to other entities like clubs and drinking establishments. All three are limited or fully prohibited from holding an interest in other licenses.

Legal Authority

State License for Farm Wineries

K.S.A. 41-308a

K.S.A. 41-311

License for Wine Makers

K.S.A. 41-308a(a)(3)

K.S.A. 41-710

Farm Winery License Benefits

K.S.A. 41-351

K.S.A. 41-2608

K.A.R. 14-11-6

Farm Winery Manufacturer’s License

K.A.R. 14-11-25

Shipping

K.S.A. 41-104

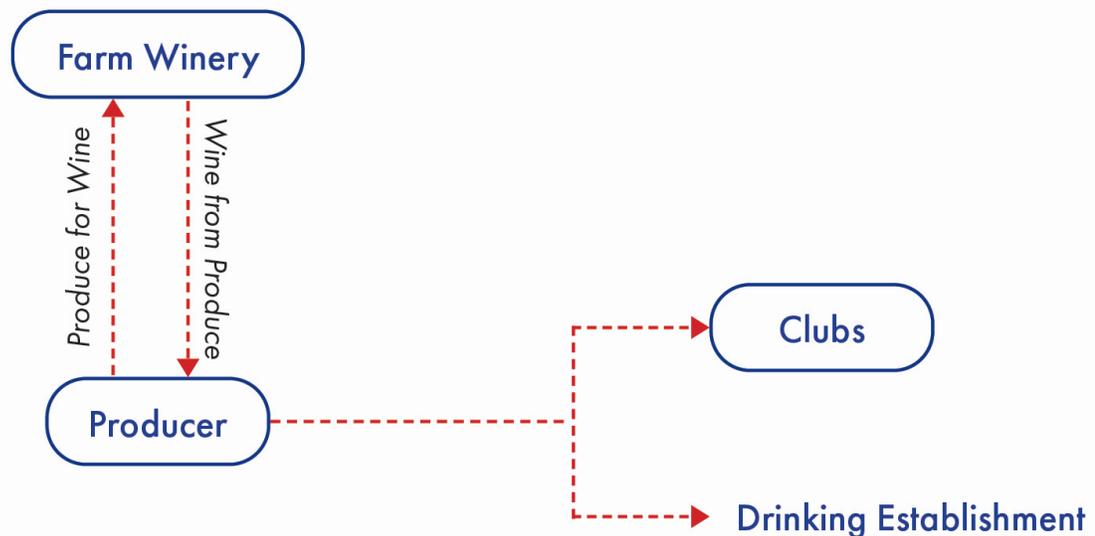
K.S.A. 41-308

Licenses for Wine Makers

Turning to the wine industry, fruit and honey producers that grow their own products have two options for producing and selling their wines: a producer's license or a farm winery license. Determining which license to obtain is mainly driven by the operation's economic capabilities and scale of operation. A producer's license allows the producer to sell wine produced from grapes, fruits, berries or honey grown by the producer. To qualify for a producer's license, the producer must first meet one of the three growing thresholds: grow 100 or more vines of sound, ripe grapes; harvest 1000 pounds of fruits or berries annually; or harvest 100 pounds of honey annually. These grapes, fruits, berries or honey must be used in the wine the producer sells. Such wine must be manufactured by a licensed farm winery and sold back to the producer's licensee. Wine manufactured for this purpose must be included in the farm winery's annual production for purposes of K.S.A. 41-308a(c).

Figure 4: Producer's License

Producer May Hold This License



Alternatively, a wine producer may obtain a farm winery license. A farm winery must be located on property that is zoned agricultural, commercial, or business. A farm winery license allows the licensee to manufacture and store domestic table wine and domestic fortified wine in a quantity not exceeding 100,000 gallons per year. The farm winery may sell wine manufactured by the licensee in the original unopened container; provide free samples on the licensed premises; sell its manufactured wine for consumption on the licensed premises; serve free samples and sell unopened containers of its manufactured wine off the licensed premises at special events monitored and regulated by the Kansas Alcoholic Beverage Control; and conduct other activities specified in accordance with federal law and K.S.A. 41-308a. Farm wineries are no longer required to manufacture their wines with at least 15% Kansas-grown grapes, fruits, berries or honey as of 2023.

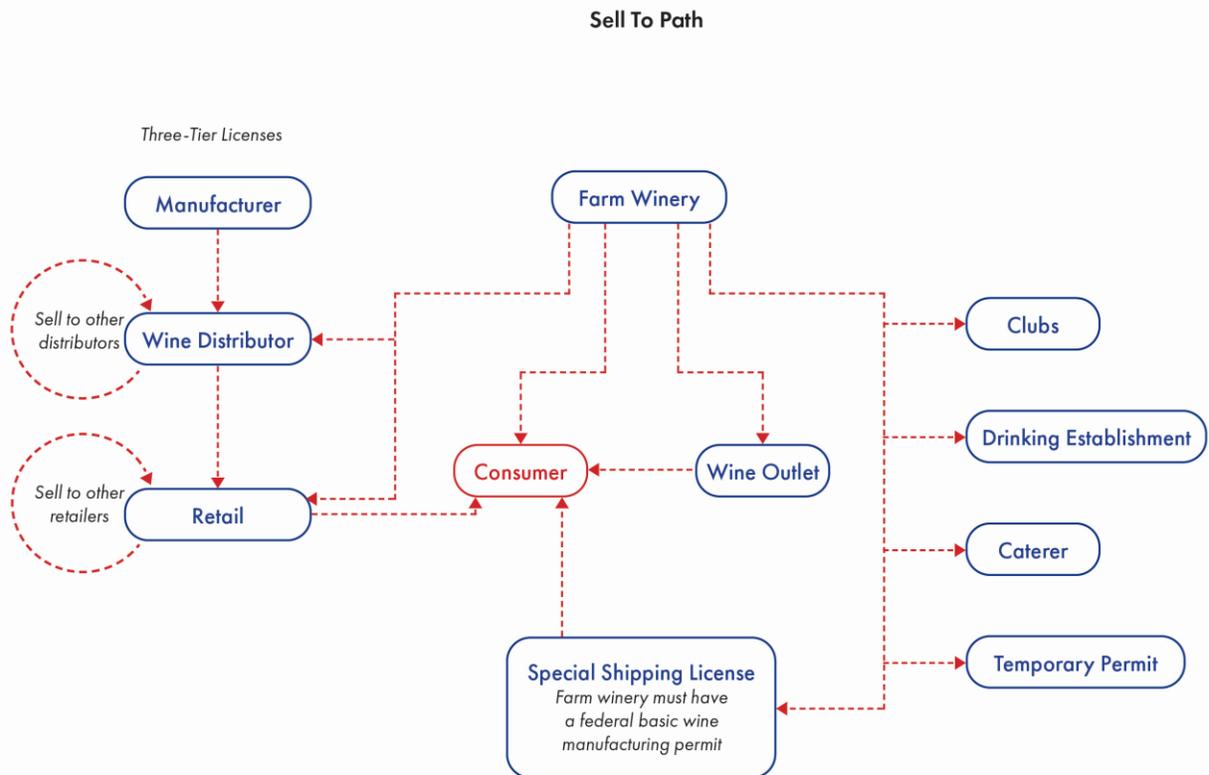
Volumetric Limits on Farm Winery License

The volumetric limit on the farm winery license is no more than 100,000 gallons in a year. The volumetric limit on Kansas farm wineries is the same as Colorado’s limited winery license, and higher than Arizona’s farm winery license (50,000 gallons). However, Kansas’ volumetric limit is restrictively low compared to other states equivalent farm winery licenses (e.g., South Dakota farm winery license — 150,000 gallons; Florida and New York’s farm winery license — 250,000 gallons per year; Missouri’s domestic winery license and Kentucky’s small farm winery license — 500,000 gallons per year; and California which does not have a volumetric limit). It is important to note that the survey developed for this report found that there are currently no farm wineries in Kansas near this limit.

Farm Winery License Benefits

A benefit to the Kansas wine industry is the comparatively less restrictive distribution opportunities for farm wineries. Under the three-tiered system, manufacturers can only sell to distributors who in turn only sell to retailers who can sell to consumers. Comparatively, farm wineries have much more freedom. Generally, statute allows a farm winery to sell produced wine directly to the consumer, wine distributors, retailers, public venues, clubs, drinking establishments, holders of temporary permits, and caterers. However, farm wineries may not sell alcoholic liquor—other than the winery’s 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.

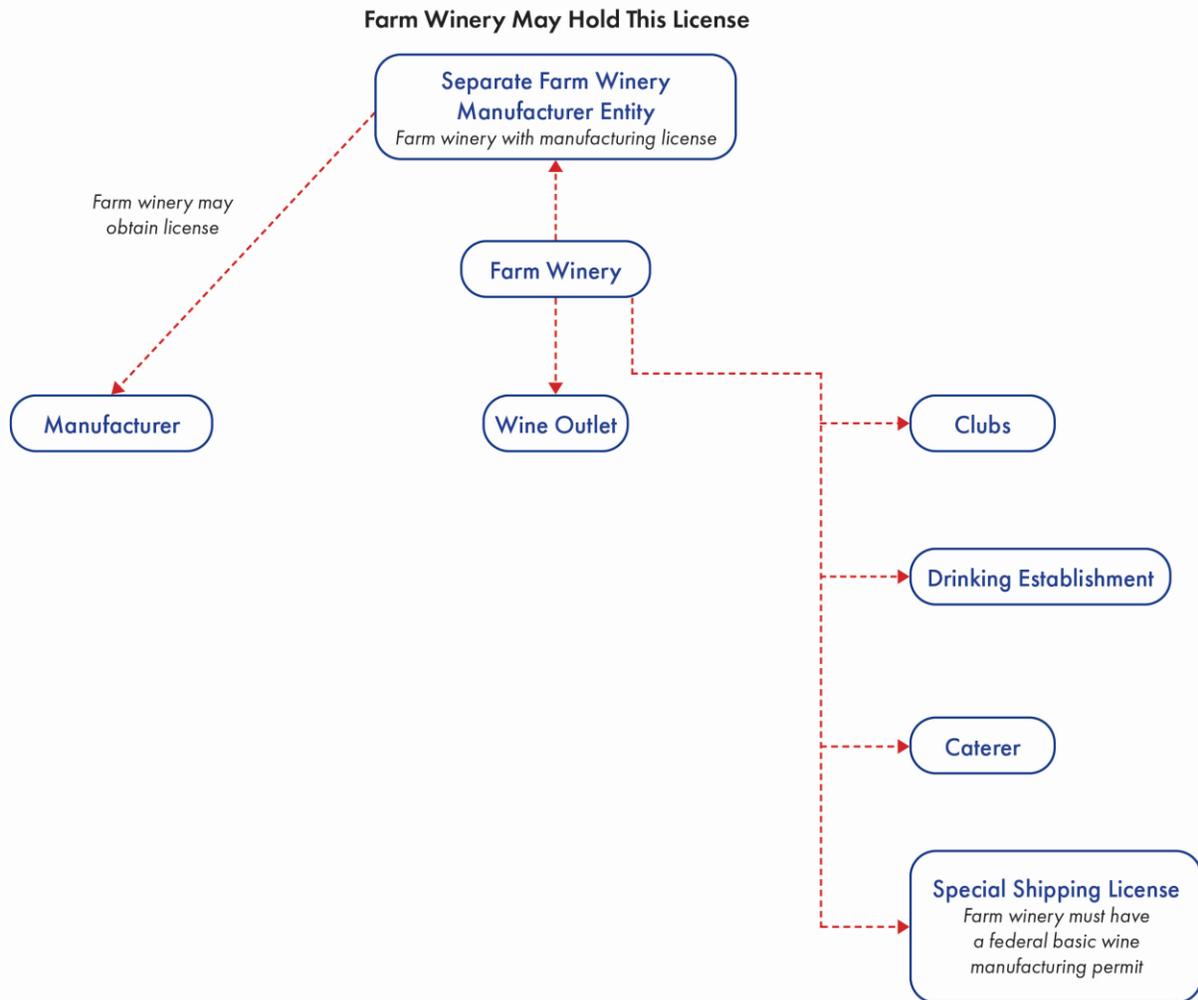
Figure 5: Sell to Path



Farm wineries are also afforded the flexibility to hold several other licenses. Generally, 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 obtain several other licenses including manufacturer’s license, wine distributor license, retailer’s license, public venue license, class B club license, drinking establishment license, caterer’s licenses, wine outlet license, and special order shipping license. These extra licenses allow the farm winery to grow their business on their premises and sell to more customers.

Figure 6: Farm Winery License



A farm winery may either use a licensed wine distributor or 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. If a farm winery does not have the resources to accomplish all that, they may use a licensed wine distributor license. Using a licensed wine distributor allows farm wineries to distribute their wines to a greater geographical area. However, if a farm winery chooses to distribute a particular product through a licensed distributor, the farm winery 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. The farm winery may self-distribute and use licensed distributors in the same area with the same product if the agreement allows this practice.

If a farm winery is dual licensed as a farm winery and retailer, it may sell wine in a separate retail section on the farm winery's premises. However, a farm winery cannot allow a customer to open a bottle of wine in or on the retail portion of the licensed premises. Additionally, a farm winery licensee may hold up to three farm winery outlet store licenses which allows the farm winery to have other locations where they sell their wines.

If a farm winery wishes to serve other alcohols besides the wine it makes, the farm winery may obtain a drinking establishment license. Importantly, if the farm winery is a registered agritourism operator, it may be granted a drinking establishment license automatically upon request, regardless of any local zoning regulation, ordinance, or resolution of any city or county, provided all eligibility requirements are met.

Finally, if a farm winery desires to sell their wines at local farmers' markets, it may obtain a farmers' market sales permit.⁶ Farm wineries that obtain a farmers' market sales permit may sell domestic wine manufactured by the farm winery at approved farmers' markets. Wine samples and open containers are prohibited at the farmers' market.

Farm Winery with Manufacturer's License

Farm wineries that outgrow the 100,000-gallon volumetric limit may benefit from obtaining a manufacturer's license as well. While a farm winery licensee may be issued a manufacturer's license, they must not commingle any wine manufactured under the manufacturer's license with wine produced under the farm winery license. A farm winery that is also licensed as a manufacturer must strictly maintain separate storage facilities, separate production records, and separate sales records for all alcoholic liquor manufactured under the manufacturer's license. 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. If the separate manufacturer's license entity desires to ship wine, it must obtain its own special order shipping license in order to ship wines to consumers in Kansas. It cannot ship under the farm winery's special order shipping license.

Shipping

When purchasing from a farm winery, a 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 out of state, the farm winery should ensure that such shipment complies with all applicable laws and regulations of such state. However, no special order shipping license is required for shipping in this situation, whether the address is in Kansas or outside of Kansas.

Alternatively, farm wineries and farm winery outlets may sell wine directly to consumers via the internet, mail or telephone. In this situation, if the wine is shipped to an address in Kansas, the farm winery must have a special order shipping license and follow all of the provisions of K.S.A. 41-350. However, if the wine is shipped to an address outside of Kansas, no special order shipping license is required, but the farm winery should ensure that such shipment complies with all applicable laws and regulations of such state.

⁶ K.S.A. 41-351.

Liability Concerns and Local Government Authority

Liability Concerns

Liability concerns are inherent when starting and running a business. The best management practices for businesses are to mitigate risks by removing items or actions that can cause injury and require liability forms. However, there are risks that cannot be mitigated, thus businesses obtain liability insurance to cover those certain issues. Liability concerns range from the growing of grapes or other fruits to serving the alcohol for farm wineries. For those that grow their own fruits, weather and climactic events are far outside of the producer's control. Adverse weather conditions such as hail, wind, drought, and freezes can decimate crops. Insect infestations, plant diseases, and wildlife can damage or destroy vines as well. While farm wineries that grow their own produce may obtain insurance on their vineyards or orchards to protect against losses from such events, it is difficult to find proper coverage for specialty crops and it is typically cost prohibitive for growers to do so. More information on insurance offered for grapes and vineyards can be found at the USDA Risk Management Agency website.⁷

Moreover, a growing need from vineyards is protection from pesticide drift. While the USDA Risk Management Agency will not cover loss from pesticide drift, some private insurance companies (e.g., Travelers) are beginning to include coverage for chemical drift. Some farm premises liability policies cover a limited amount of damage from chemical drift. However, the coverage may not always include drift from aircraft, loss of market, or loss of use of soil and crops. It is important for growers to discuss these options and risks with their insurance agent. This is a significant issue vineyards are facing in other states as well, such as Texas and Missouri.

From the field to the barrels, farm wineries risk leakage, contamination, and product loss. Leakage occurs when either the storage of the wine fails or storage is damaged during transportation. Contamination can be caused by pesticides, arsenic, fungus, or other outside contaminants like smoke. These contaminations can ruin an entire crop. Additional insurance policies may be obtained to cover the loss of wine from leakage and contamination.

When farm wineries serve wines on premises, their liability is similar to bars. In this situation, farm wineries must ensure that they do not serve minors or overserve customers. Further, general premises liability concerns arise when customers drink on the premises or are allowed to walk around the field and production areas. This can be covered by insurance policies specifically for liquor liability and premises liability.

Premises liability is one of the largest liability concerns for farm wineries that invite others onto their property, especially if they allow people to walk around their fields or through their production facilities. This may be mitigated by obtaining premises liability insurance. However, farm wineries are able to further mitigate this liability by acquiring an agritourism designation. The state agritourism protections can be found in K.S.A. 32-1431 through 32-1438. Any business, including farm wineries, providing "one or more agritourism activities" may register with the Kansas Department of Commerce to receive an agritourism designation. "Agritourism activity" means "any activity which allows members of the general public, for recreational, entertainment or educational purposes, to view or enjoy rural activities, including, but not limited to, farming activities, ranching activities or historic, cultural or natural attractions. An activity may be an agritourism activity whether or not the participant pays to participate in the activity. An activity is not an agritourism activity if the participant is paid to participate in the

⁷ <https://www.rma.usda.gov/en/Fact-Sheets/National-Fact-Sheets/Grapes>

activity.” Once a farm winery has been registered as an agritourism location, they must post and maintain signage with a warning specified in K.S.A. 32-1434. This warning gives notice to customers that the farm winery is protected under the agritourism statutes; that farm wineries are not liable for injuries arising from “the inherent risks of such agritourism activity”; and that the customer is “assuming the risk of participating.” While the agritourism registration provides limited liability protection, it does not protect registrants from injuries arising from “willful or wanton conduct,” or when “the registered agritourism operator has actual knowledge of a dangerous condition on” their land.

Overall, these liabilities and risks are borne by the entity. It is in the farm winery’s best interest to construct their buildings using standards similar to building codes to prevent structural failures; to keep their premises free from dangerous conditions; and to act in a way that is not detrimental to their neighbors. While some statutes may limit liability, it is not a total bar on liability. If farm wineries act negligently, intentionally, or in a wanton manner, they may still face a lawsuit for these actions.

Local Government

The general rule is that a county is authorized to adopt and enforce zoning and building regulations; however, this authority does not apply to land or structures used for agricultural purposes. A similar provision is found in both the “Cities and Municipalities” and “Counties and County Officers” statutes—chapters 12 and 19 respectively—that provide the following:

Legal Authority

Local Government

K.S.A. 12-758

K.S.A. 19-2908

K.S.A. 19-2921

Van Gundy v. Lyon County Zoning Board,
237 Kan. 177 (1985).

“Except for flood plain regulations in areas designated as a flood plain, regulations adopted pursuant to this act shall not apply to the use of land for agricultural purposes, nor for the erection or maintenance of buildings thereon for such purposes so long as such land and buildings erected thereon are used for agricultural purposes and not otherwise.”

Thus, outside of floodplain regulations, the legislature has seen fit to limit the authority local governments have over lands and buildings used for agricultural purposes. Courts and Attorney General advisory opinions alike have determined that local governments may not use zoning regulations to regulate lands or buildings used for “agricultural purposes.” In a recent Kansas Codes Court case, *Board of County Commissioners of Johnson County v. K.C. Pumpkin Patch, LLC*⁸, the court was deciding whether the County could require a conditional use permit for a local chamber of commerce event that was being hosted at the farm winery, K.C. Wine Co. The Court here found that Johnson County could not require a conditional use permit for a special event on a farm winery. The Court also found that the county could not “regulate directly by extending its special events code...to prohibit what is permissible under the agricultural use exemption in a rural zone.” While “agricultural purposes” is not defined in the statute, it is generally defined broadly by the courts. Kansas courts have found “agricultural purpose” to include raising of canaries⁹; raising and feeding of livestock¹⁰; operation of livestock feedlots¹¹; blasting

⁸ *County Commissioners of Johnson County v. K.C. Pumpkin Patch, LLC*, No. 16CC321-322 (Johnson Cty. Civ. Dist. Ct. Aug. 18, 2017)

⁹ *Board of County Commissioners v. Brown*, 183 Kan. 19 (1958)

¹⁰ *Carp v. Board of County Commissioners*, 190 Kan. 177 (1962)

¹¹ *Fields v. Anderson Cattle Company*, 193 Kan. 558 (1964)

rock to excavate a pond for recreation and irrigation purposes¹²; operation of a wildlife hunting preserve¹³; and a landing field being used for sod production and for a plane used to accomplish tasks on the farm and ranch¹⁴. Conversely, courts have declined to include training horses for racing as an agricultural use for zoning purposes¹⁵; nor does it include raising and keeping greyhounds for racing or sale¹⁶.

Concerns for local government authority and liability arose during the development of the report. Under existing statute, city, municipality, and county ordinances and regulations are not applicable to land or buildings used for agricultural purposes, except floodplain regulations.¹⁷ The question of whether a farm winery's buildings are "agricultural purposes" arises here as it did in the property tax section, and likely has a similar analysis. The answer can be argued either way; however, the broad definition of "agricultural purposes" could likely include the processing and marketing of agricultural products.¹⁸ Additionally, an agritourism designation would likely bolster a farm winery's designation as a building used for agricultural purpose.

Property classifications can be detail intensive. The question of whether a general definition applies to a specific instance can cause discrepancies that creates a grey area of local authority, specifically over buildings on a farm winery's premises. Here, the questions are whether a local government can control activities on a farm winery through zoning and zoning regulations and whether the buildings on a farm winery premises can be designated as being used for an "agricultural purpose." As referenced above, the agricultural property distinction when enforcing local regulations on farm wineries similarly mirrors the same issues as discussed under the property tax section. Typically, the growing of crops and the processing of agricultural products arguably fall under land used for agricultural purposes. Farm wineries could cause confusion based on their valued-added production system; however, when the farm wineries grow the grapes or other commodities used for their wines on the same premises, the logical progression from vine to wine on the same premises would be compelling for the whole process to be considered an agricultural purpose. Agritourism registrations added another layer to this analysis, as a farm winery that is registered as agritourism would statutorily classify as agricultural property.

Overall, this is not a report on local government liability; however, it would seem that per current statutes, local governments would not be liable for mitigating activities on agricultural lands or in agricultural buildings as they are explicitly prohibited from the duty of enforcing ordinances and regulations, except for floodplain regulations on agricultural property.

¹² *VanGundy v. Lyon County Zoning Bd.*, 237 Kan. 177 (Kan. 1984)

¹³ *Corbet v. Board of Shawnee County Commissioners*, 14 Kan.App.2d 123 (1989)

¹⁴ *Miami County v. Svoboda*, 264 Kan. 204 (1998)

¹⁵ *Seward County ex rel. Seward County Bd. Of Com'rs v. Navarro*, 35 Kan.App.2d 744 (2006)

¹⁶ *Weber v. Bd. Of County Com'rs of Franklin County*, 20 Kan.App.2d 152 (1994)

¹⁷ See K.S.A. 19-2921; K.S.A. 12-758.

¹⁸ See *Blauvelt v. Bd. of Leavenworth Cnty. Comm'rs*, 227 Kan. 110, 113, 605 P.2d 132 (1980) (holding that a dwelling located on a farm occupied by the owner-farmer serves an agricultural purpose and is therefore exempt from county zoning regulations).

Industry Analysis

To create better understanding of factors encouraging or inhibiting the growth of the wine industry in Kansas, the following section reviews Kansas' production and market characteristics in the context of other states via an interstate comparative analysis and on its own through a SWOT analysis (Strengths, Weaknesses, Opportunities, and Threats).

Interstate Comparative Analysis

With a long history of winemaking and large, robust industry, the United States is considered the fourth largest wine producing nation in the world. In 2022, nearly a million acres of bearing grapevines produced over 5.92 million tons grapes of all types (USDA NASS). The average price received by producers in 2022 was \$1,000 per ton, leading to a total value of production of over \$5.92 billion in grapes. Little information exists on the national level for wine grape numbers specifically, but on average, about 64% of the nation's annual production is crushed for wine, raisin, or table grape purposes. From that crush, the U.S produced over 752.07 million gallons of wine in 2022. This translates into roughly 316 million cases for the 2022 vintage from over 10,000 wineries from coast to coast.

The wine industry has a significant role in the U.S. agriculture economy. According to a 2022 study published by Wine America, the entire U.S. wine supply chain contributes an estimated \$276.07 billion in total output and more than 1.84 million jobs to the economy. The winery and vineyard sectors alone directly contribute \$33.26 billion and 131,500 jobs. For context, in the same year, the entire Kansas agriculture industry directly contributed \$53.4 billion and 136,200 jobs to the state's economy.

Every single state in the nation produces wine. Some produce barely a few thousand cases annually, while other major producers are recognized both domestically and internationally for their high volume and quality of wine. Each state's wine industry has their own unique flavor, along with characteristics that determine market competitiveness and long-term viability. To understand the context of Kansas wine in the national landscape, this comparative analysis looks at a selection of states, first to identify and categorize their industries by a set of production and market characteristics, and second to classify Kansas' industry within one of these categories.

State Comparisons

After review, the 11 selected states separated into four distinct groups based on the industry's size (acreage, production, and volume), existence and strength of support organizations, data availability, and other industry and market characteristics. Those categories are Gold Standard, Established, Expanding, and Emerging.

Gold Standard—California

It is impossible to discuss wine in the United States without California. While the region's first vines date back to 1772, the state's wine has exponentially grown in popularity and recognition since the 1976 Judgment of Paris. This enormous industry has over 575,000 bearing acres yielding over 3.3 million tons in 2022. The resulting \$3.2 billion in production value is produced by 5,900 vineyards and 4,800 wineries. Each organization representing growers, winemakers, or specific regions and AVAs have a robust lineup of resources and support, in addition to strong public marketing and promotion platforms. Unlike the vast majority of states, data is plentiful and readily available. The California Department of Agriculture publishes annual acreage and crush reports in conjunction with USDA NASS to give county-level detail about both the production and processing of grapes in the state, with particular focus on wine statistics across all grape varieties. In economic impact, California has an estimated \$73 billion in

output and over 422,000 jobs contributed to the economy. It has no contenders, and therefore stands alone in its own category as the “Gold Standard” in the U.S.

Established—Washington, Oregon, New York

The next set of wine industries can be found in the north: Washington and Oregon in the Pacific Northwest, and New York in the northeast. Each of the states have large industries with strong support and recognition domestically and internationally. Bearing acreage ranges from 33,000 to 55,000 acres, yielding between 57,000 and 240,000 tons each year. The value of production for available years is \$37 million for New York, \$271 million for Oregon, and \$328 million for Washington. On average, robust data is available within the last three years, but often years are skipped, as regular reporting is difficult and costly to complete accurately. Oregon has the most expansive information available annually, with information on acreage, crush, and pricing collected in conjunction with the University of Oregon. Some characteristics of note include active public marketing and promotion platforms, associations, and commissions. These states are also recognized internationally due in part to the work of these organizations to promote and market their stellar wines. Of these three, only New York has a farm winery license available to producers. The economic impacts of the wine industries for these states range from \$6 billion to \$10 billion in output and 40,000 to 70,000 jobs. Due to the strong support and significant production, these three states are categorized under the “Established” banner.

Expanding—Texas, Colorado, Missouri, North Carolina

Several states have seen impressive market growth over the last few decades, despite not being well known for their ability to make wine. This group includes North Carolina in the southeast and Texas, Colorado, and Missouri in the middle of the country. Their wine industries can be characterized as medium to small industries with medium organization. Texas is the largest of this group with over 5,000 acres of vines, approximately 7,100 tons of grapes, and about \$13 million in production value as of 2020. The other three have more modest sized production. North Carolina has 2,300 acres of vines, while Missouri and Colorado have 1,800 and 750 acres verified, respectively. Similar to the previous group, some data is available. However, it is rarely annual, regular, and complete. Broad information is often several years out of date when it is accessible. For support, public marketing and promotion websites are present for all four states, and nearly all of them have a council or advisory board designated by the legislature to represent the industry’s interests at the state government. All have active industry associations with limited scale. Overall, these wine industries have an economic impact of \$1 billion to \$8 billion in output and 14,000 to 75,000 jobs for each state. These states are rapidly growing with some key successes towards growth, and they fall under “Expanding” wine industries.

Emerging—Ohio, Indiana, Iowa

The final group of state wine industries can all be found in the Midwest. Clustered in the Great Plains and Great Lakes subregions, each of these traditionally agricultural states have small industries finding their own local niche in the greater wine conversation. Ohio, Indiana, and Iowa have between 600 and 1,300 verified vineyard acres per state, but data is not available to understand the scale of production in the state. What information is available is limited to a handful of statistics several years out of date. Depending on the state, wine and grape producers may have low to moderate support from organizations, university programs, or marketing and promotion groups. Every state has a legislative group to represent them in state government, and some have a farm winery license available. Ohio is unique among the states for its checkoff program associated with the grape commission. For each gallon of wine sold, the commission receives five cents to fund activities promoting Ohio wine. This builds up to \$1.2 million each year. In regard to economic impact, each state is estimated to see anywhere from \$1

billion to \$4 billion in output and 3,000 to 25,000 jobs contributed to the state’s economy from wine and wine-related activities. While considerably smaller in size and less organized than other states, this group of states is seeing a spark in interest over the last few years. Therefore, they are grouped together with the title “Emerging.”

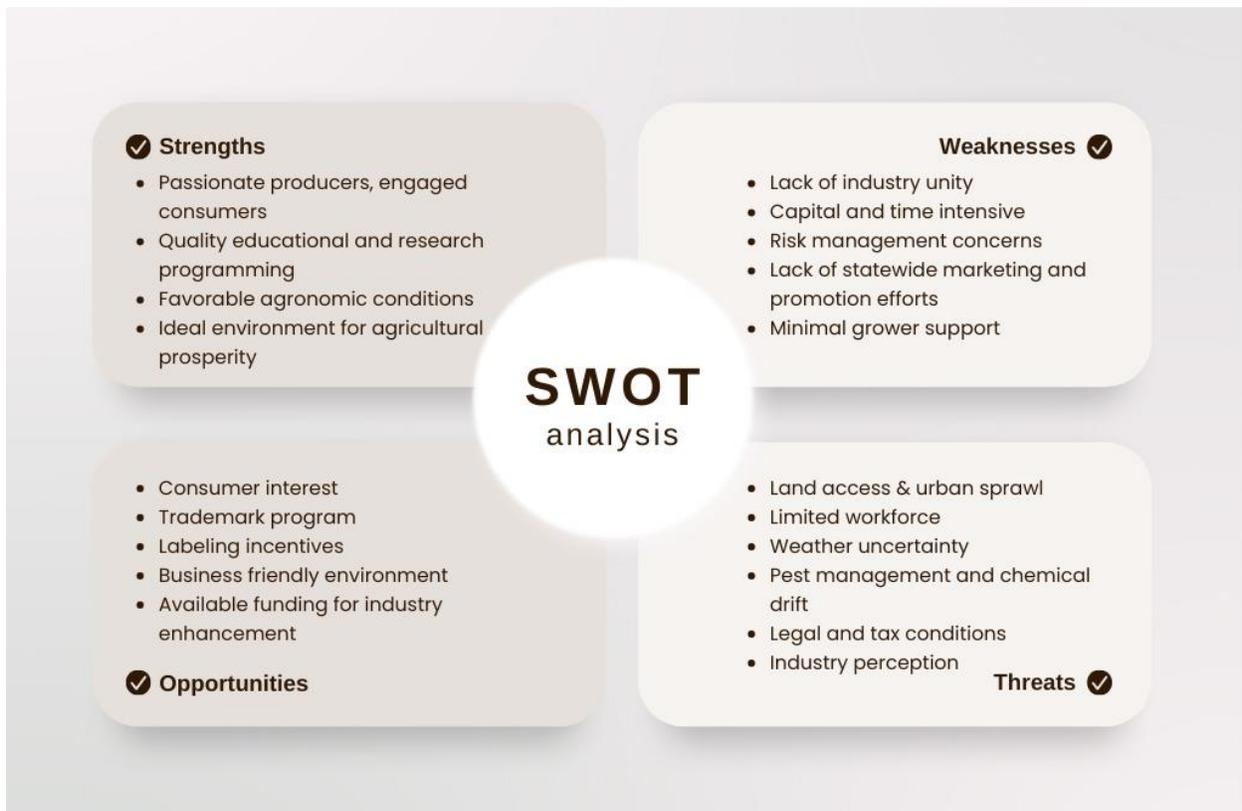
Discussion

Based on this analysis, Kansas’ wine industry currently resides within the “Emerging” states category. With the state’s small production, low organizational support, lack of data, and small economic impact, the industry has room to grow acreage and improve the current system. In order to move up to the “Expanding” category, in addition to a substantial increase in acreage and production, significant changes would need to occur to the current structure and industry support in place.

SWOT Analysis

To see growth, Kansas’ wine industry must leverage its strengths to overcome barriers and take advantage of opportunities in the future. A SWOT analysis (Strengths, Weaknesses, Opportunities, and Threats) identifies both the positive and negative elements encouraging or inhibiting the industry’s progress. The internal side of the analysis evaluates characteristics and factors within the wine industry or state impacting growth and stability of the wine industry. More often than not, these strengths and weaknesses are within the industry’s control to change. The external side appraises characteristics and factors external to the wine industry. Usually outside of the industry’s influence, these opportunities and threats may impact its growth or stability.

Figure 7: Kansas Wine Industry SWOT Analysis



Internal

Strengths

The wine industry in Kansas has many strengths to support its growth. Kansas has favorable growing conditions for certain varieties of grapes due to its climate, geography, and soil. Grapes are both a high value and low water intensity crop, offering producers a viable alternative to traditional crops. The industry has a positive vineyard contract atmosphere, allowing grape producers to secure a market in advance, with both a low tax and regulatory burden across the initial supply chain. With a long history of viticulture and enology in the state, wine and grape producers are passionate and dedicated to growing their businesses. The state has a well-established consumer base willing to buy local, and winemakers have leveraged this to expand their direct-to-consumer sales under farm winery licenses. In addition, Highland Community College has a dedicated viticulture and enology program in Kansas creating educational opportunities for winemakers and entrepreneurs.

Weaknesses

Unfortunately, there are more weaknesses in the Kansas wine industry than there are strengths. Growing grapes or making wine is an extremely expensive industry to enter. Establishing a vineyard is capital intensive during the initial stages, and it takes three to five years for a grower to harvest a viable crop once established. There is also limited equipment and infrastructure available in the region, increasing the expense to access vital tools of the trade. One of the greatest challenges the industry faces is risk management. Vineyards are often harmed by chemical drift from neighboring crop operations, and producers may lose entire vines in a single event. Currently, producers have little to no access to affordable crop insurance and may struggle to afford recovering from the loss. Support is also minimal. There is a significant fragmentation of both the industry and the organizations that support it, fueled by disproportional power, competing interests, and a lack of strong, unified leadership. The legislative advisory board no longer exists, so advocacy and support for the industry has fallen upon a handful of discordant organizations. In addition, there is no statewide wine marketing and promotion website for tourists or interested grape growers to go to find more information. The legacy of deep-seated and lengthy prohibition set the industry back a century, and the imprint is still felt in the current legal environment.

External

Opportunities

Many opportunities exist in today's wine industry. Consumers continue to demand wine and wine variety which positions wine makers and grape growers with the opportunity to leverage the products. The *From the Land of Kansas* trademark program could be leveraged by producers to capitalize on consumers who purchase local products. Additionally, there are opportunities to create labeling incentives to draw attention and demand for easily identified products. The USDA annually provides funding for the Specialty Crop Block Grant in Kansas. Creating programs to further market Kansas wine is available and open ended. Overall, Kansas has a business-friendly environment to support growers and winemakers.

Threats

Still, many threats face the Kansas wine industry. With the continued growth within the state, urban sprawl and the continued uptrend in agricultural land prices will continue to put pressure on land access for new and existing vineyards and farm wineries. Along with other industries, workforce is a persistent issue and without a reliable workforce, industry growth will be limited. As shown both recently and historically, Kansas' weather can be chaotic and violent at times. Compounded with the historic

droughts the state has experienced, the uncertainties for the industry only serve to dissuade growth. The loss of crops from pesticide drift causes significant negative impacts to producers. Simultaneously, producers are combatting insects and plant diseases they may struggle to contain or control. The uncertainties dissuade producers of other crops to starting growing grapes as an alternative crop for their farming operations. Politically, the industry seems to lack a conduit—such as a trade association—to efficiently convey legislative information and policy needs between the industry and legislature. This may be compounded by the lack of a united voice for the state’s wine industry. The statutory interpretation of where farm wineries fit as they straddle the border of commercial and agricultural seems to be unclear. The benefits of agritourism designations beyond the context of liability and its application to farm wineries as a whole are unclear. Further, the definition of agritourism is inconsistent with agricultural use. However, improper property tax and zoning authority could stifle farm winery growth and successes. Finally, the wine industry is very competitive, but often perceived in a negative light by other commodity groups, making growth very difficult.

Conclusion

The Kansas farm wine industry has seen enormous growth over the past few decades, but it is considered “Emerging” in comparison to other U.S. states. To grow the farm winery industry in Kansas, the industry must overcome barriers both internally and externally. While growers and producers have educational support to be successful in Kansas, the lack of industry advocacy and promotional support limits growth and expansion. Other challenges include low industry unification, insufficient grower support, limited expansion of education and research, and conflicting interpretation of existing statutes.

An opportunity to diversify crops, improved incentives and education, and passionate producers and consumers offer a path forward for producers and winemakers in Kansas. Farm wineries benefit from the current licensing structure by not having the stringent limitations associated with the three-tiered liquor structure. Additionally, farm wineries who choose to register as an agritourism establishment with the state can receive liability coverage and property tax benefits, while also providing additional hands-on benefits to the consumer.

Overall, the outlook is positive for the industry; however, major obstacles still exist which may limit progress towards a brighter future for the Kansas farm wine industry.

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Appendix A: Additional State Statutory and Case Analysis

Property Tax Definitions

The **Ohio** definition of “land devoted exclusively to agricultural use” requires that the land or parcels total 10 acres or more to qualify as agricultural land. The definition further requires “...parcels of land where devoted exclusively to...the production for a commercial purpose of...fruits...” Ohio Rev. Code Ann. §5713.30(A)(1). Additionally, the definition of “agriculture” in Ohio Rev. Code Ann. § 1.61 includes “viticulture” and “wine-making,” and would apply to the Assessing Real Estate section, Ohio Rev. Code Ann. § 5713.

While vineyards and orchards are not expressly mentioned under Ohio statute, the property would likely fall under the classification of agricultural property. This is supported by the recent Ohio Supreme Court decision in *Dalton G. Bixler 2016 Trust v. Tuscarawas County Board of Revision*, where the Court overruled the Board of Tax Appeals earlier decision finding that parcels with a warehouse and a toolshed could not qualify for Current Agricultural Use Value. 2023 WL 4572052 (2023). The property was divided between the vineyard and small parcels where the warehouse and toolshed were located. The warehouse stored filled and empty wine bottles and the toolshed stored barrels, wine-making equipment, and hosted weddings and other events. For those reasons, the county auditor changed the warehouse parcel to commercial and the toolshed to industrial because the buildings were used to store supplies, equipment and hosted events. The owners appealed the decision claiming the definition of “agriculture” used to determine qualification for the current-agricultural-use-value tax program to include the parcel. The Court agreed, finding that the definition of agriculture in Ohio Rev. Code Ann. § 1.61 includes “viticulture, winemaking, and related activities;...the processing,...storage, and marketing of agricultural products when those activities are conducted in conjunction with...production.” This definition was found to apply when determining agricultural land under Ohio Rev. Code Ann. §5713.30. Thus, since the warehouse parcel was used primarily for storing filled and empty wine bottles, it was used for agricultural purposes and should be considered agricultural property. Additionally, the toolshed parcel was found to be entitled to be an agricultural property because it was used for the storage and processing of wine as defined in the statute, which also was of more value than the revenue gained from hosting events. Overall, parcels with buildings and structure that store supplies or tools used to process agricultural products were entitled to tax exemptions enjoyed by other agricultural properties.

In **Texas**, the definition of agricultural property explicitly states what activities are covered. These activities include viticulture and bees kept “for the production of human food and other tangible products having commercial value...” Texas does not establish a minimum size of acreage for the tax classification, except bona fide agricultural pursuits can take place on small tracts of land, such as vineyards, orchards, and specialty crops like berries and vegetables.

In **Washington**, the Open Space Taxation Act created three property classifications which allow property to be taxed based on current use value: open space, farm and agricultural land, and timberland. Wash. Rev. Code § 84.34.020. The definition of “farm and agricultural land” distinguishes between parcels that are less than 5 acres, parcels that are more than 5 acres but less than 20 acres, and parcels that are 20 acres or more. Generally speaking, the statute requires that land be “devoted primarily to the production of livestock or agricultural commodities for commercial purposes...or other similar commercial activities as may be established by rule.” One of the criteria for a parcel that is more than 5 acres but less than 20 acres to qualify is that the land has “standing crops” that are expected to be

“harvested within 7 years.” Vineyards and fruit trees are explicitly considered a standing crop under that definition.

Excise Tax Laws

California Taxes on Wine = 4.75% state sales tax + 1.25% county sales tax + 0.125% district sales tax + \$2/ gal of wine sold distilled spirits tax + \$0.19 / gal. of wine surtax + \$0.20 / gal of wine alcohol tax.

In **California**, sales of wine are subject to state, county, and district sales tax, as well as an excise tax. Cal Rev & Tax Code § 32010. State sales tax has a rate of 4.75%, the uniform county sales tax is 1.25%, and the uniform district sales tax is 0.125%. Cal Rev & Tax Code § 6051; Cal Rev & Tax Code § 7202(a); Cal Rev & Tax Code § 7261(a). The excise tax is based on the type of alcohol sold and the percentage of alcohol it contains. All distilled spirits (which includes wines) have a rate of \$2/gallon. Cal Rev & Tax Code § 32201. Additionally, all wines with 14% alcohol/gallon or less have an excise tax of 1 cent/gallon, if the wine contains more than 14% alcohol/gallon the rate is 2 cents/gallon. Cal Rev & Tax Code § 32151(b) & (c). This excise tax extends to champagne and sparkling wine (not hard cider) and taxes these beverages at 30 cents/gallon. Cal Rev & Tax Code § 32151(d). On top of the excise tax there is a surtax, where wine with 14% alcohol or less is taxed at a rate of 19 cents/gallon and wine with a greater percentage of alcohol is charged eighteen cents/gallon. Cal Rev & Tax Code § 32220(b) & (c).

Colorado Taxes and Fees on Sales and Production of Wine = \$0.0733 per liter of wine (excise tax) + \$0.10 / ton of produce used in producing wine (grapes excise tax) + 3% sales tax + \$0.01 / L of vinous product sold (development fee) + winery surcharge, see below.

Winery Surcharge Calculations

- 1-9,000 liters sold = \$0.05 per liter surcharge
- 9,001-45,000 liters sold = \$0.03 per liter surcharge
- 45,001+ liters sold = \$0.01 per liter surcharge

Colorado imposes an excise tax of 7.33 cents per liter on wines sold. Colorado also imposes another excised tax of 10 cent per 1 ton of produce (i.e. grapes) that is used by a Colorado winery to produce wine in state. Any business selling alcoholic beverages at retail to customers must pay a sales tax of 3%, as wine is not exempt from the sales tax. To support the Colorado industry development fund, a wine development fee of 1 cent per liter is imposed on all wines sold or used in the state. Finally, a winery surcharge is included in the tax amount. This surcharge is based on the amount of liters produced and sold by the winery. The first 9,000 liters is taxed at 5 cents per liter, the next 9,001 to 45,000 liters sold is taxed at 3 cents per liter, and 1 cent per liter is imposed on any amount over 45,001 liters. C.R.S. 44-3-505 allows cities and counties the right to assess certain fees on license holders. There are different fees for the various licenses.

Missouri Taxes and Fees on Sales and Production of Wine = 4% Sales Tax + \$0.30 / gal. of wine sold + \$0.12 / gal. of wine for Missouri Wine and Grape Fund + (\$6 / ton of grapes produced OR \$6 / 160 gal. of grape juice produced Development Fee) + \$5 / 500 gal. of wine produced license fee.

Wine sales and production in **Missouri** are subject to an excise tax, sales tax, and a few other fees; however, the state has also created a tax credit available for new equipment. The excise tax is charged at a rate of 30 cents/gallon tax on all wine sold. Mo. Rev. Stat. § 311.550 (1(2)). Additionally, there is a fee to support the Missouri Wine and Grape fund, which is levied at a rate of 12 cents/gallon of wine

sold. Mo. Rev. Stat. § 311.554. Wine sales also are subject to state sales tax at a rate of 4% on the gross receipt. Mo. Rev. Stat. § 144.020.

There are several different fees levied against sales and production of grapes, grape juice, and wine in Missouri. There is a fee to support the Missouri Wine Marketing and Research Development Fund which is levied at a rate of \$6 per 1 ton of grapes or \$6 per 160 gallons of grape juice produced. Mo. Rev. Stat. § 275.464. There is also a license fee for wine production which is charged at a rate of \$5 per 500 gallons of wine produced but has a cap of \$300. Mo. Rev. Stat. § 311.190.

Missouri is unique in that grape growers and wine producers can get a tax credit equal to 25% of the cost of any new equipment purchased and used directly in the process of growing grapes and producing wine. Mo. Rev. Stat. § 135.700.

Washington Taxes on Sales of Wine = 6.5% sales tax on sales of wine + 0.25% additional sales tax + \$0.215 / L of wine sold excise tax + \$0.02 /L of wine sold development tax + (7% x \$0.2025 x L of wine sold)

In **Washington**, the sales tax applies to the sale of wine, as it is tangible personal property, the definition of which includes any articles produced, fabricated, or imprinted. The sales tax is 6.5%. Wash. Rev. Code Ann. § 82.08.020(1)(a). While some services/items are excluded from sales tax, wine is not one of them. Wash. Rev. Code Ann. § 82.04.050(1)(a). Additionally, there are excise taxes collected on the sale of wine in the state of Washington. Wash. Rev. Code Ann. § 66.24.210. Domestic wineries collect this tax from the buyer and then pay it to the state. Out-of-state wineries must pay these taxes themselves and can't collect them from the customer they sell wine to in Washington. The taxes levied in this section total 21.5¢ per liter of wine sold. Wine sales between wineries are not subject to this tax. There's also a tax to support the wine commission which is levied at a rate of two cents per gallon of wine. Wash. Rev. Code Ann. § 66.24.215(1)(a). Wash. Rev. Code Ann. § 66.24.210(b) references an additional tax which sets a tax rate of 7% and is applied to direct payments on wine purchased by wine distributors. To find how much is owed under this tax, the wineries use this equation: \$0.2025 x 0.07 x liters of wine sold = tax. Finally, while not a tax, a winery's license fee is based on the gallons of wine produced. See Rev. Code Wash. (ARCW) § 66.24.170(1)(a).

Pre-emption

In addition to the federal regulations for wine labels, states do have some authority to pass legislation controlling the use of geographic names on wines. While the federal statute does address the percentage, states may enact statutes with stricter requirements or that supplement the federal statutes. This issue was at the heart of a California case, *Bronco Wine Co. V. Jolly*, 95 P.3d 422 (2004). In *Bronco*, the Court determined whether the federal statute preempted California from closing a "loophole" by requiring wines to incorporate a certain percentage of grapes grown in Napa to have Napa included in the brand name. The loophole was the grandfather clause that was included in the federal law. This clause allowed the continued use of brand names that did not meet the 75% incorporation threshold but were registered before July 7, 1986, and among other things, the wine was also labeled with the actual area of origin as well. 27 C.F.R. 4.39(i)(2). California passed a law prohibiting the use of a brand name or a label bearing the word Napa unless at least 75% of the grapes were grown in Napa County. This was in response to a winery using brand names (e.g., Napa Ridge, Napa Creek Winery) it had purchased from other wineries; however, their wine did not use grapes from Napa County. Instead, they were using a majority of grapes grown in neighboring counties or nearby regions

(e.g., California’s Central Coast, North Coast, and Lodi). The California Supreme Court ruled otherwise, finding that the law properly supplemented parallel federal regulation. The Court reasoned that California statute restricting use on wine labels of geographic brand names using misleading Napa County appellations or sub-appellations was consistent with Congress's overall purpose in enacting Federal Alcohol Administration Act (FAA Act). That purpose being to ensure that the purchaser should get what they thought they were getting, and that the representations both on labels and in advertising should be honest and straightforward and truthful. Thus, the Court let the state law stand because it did not change the percentage requirement below 75% and supplemented to percentage requirement by requiring all wines to meet that threshold and removing the loophole in their state.

Appendix B: Data and Analysis

Data Collection

For this report, research and data collection was completed via interviews, survey, secondary data analysis, and document, record, and statutory review.

Survey

To gather information on the current status of the Kansas grape and wine industries, a survey was given to a list of wineries and vineyards in the state between June and September 2023. Individuals were asked about their production and marketing.

For vineyards, the list of contacts was developed from research on DriftWatch, a website that records and specialty crop growers to help prevent and manage chemical drift impacts. All 61 vineyards identified in the state came from Driftwatch. These vineyards were contacted via email and phone with questions about vineyard acreage, annual production in tonnage or pounds, average yield, major grape varieties produced, and marketing methods. There was a total of 39 responses, a 64% response rate.

For wineries, the Kansas Department of Revenue provided the list of current Kansas farm winery license holders. This included 42 farm wineries, cideries, and meaderies in the state. These entities were contacted via email, phone, and personal visits to ask about any vineyard or orchard acreage, annual production in tonnage or pounds, average yield, major grape varieties produced, and marketing methods. There was a total of 23 responses, a 55% response rate.

Overall, 108 people and entities were contacted over four months. There were 228 emails sent, 29 phone calls made, and 8 in-person conversations. With 62 responses, the survey received a 58% response rate overall.