

HOUSE BILL 1549

By Casada

AN ACT to amend Tennessee Code Annotated, Title 57,
Chapter 3, Part 2, relative to the "Grape and Wine
Law".

WHEREAS, on October 24, 2008 in *Jelovsek, et al. v. Bredesen, et al.*, the United States Court of Appeals for the Sixth Circuit held that portions of Tennessee's Grape and Wine Law is discriminatory on its face and remanded the case to the United States District Court for further proceedings; and

WHEREAS, if Tennessee's Grape and Wine Law is left as it exists, and the district court ultimately holds that it violates the dormant commerce clause of the Constitution, which appears likely, the judicial branch of government will amend the law to make it comport with the commerce clause; and

WHEREAS, if the General Assembly fails to address the defects in the law, the district court may strike portions of the law which would prevent wineries from operating in Tennessee, now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 57-3-207, is amended by deleting such section in its entirety and substituting instead the following:

§ 57-3-207.

(a) This section shall be known and may be cited as the "Grape and Wine Law."

This section shall prevail over any conflicting statutory provision.

(b) A Tennessee winery license may be issued as hereinafter provided for the manufacture of alcoholic vinous beverages, as defined in § 57-3-101, upon verified, written application to the commission on proper form herein authorized to be prescribed

and furnished, and the application may be granted by the commission, subject to the restrictions of this chapter. Any Tennessee winery license shall authorize the holder thereof to manufacture, but not rectify, alcoholic vinous beverages, unless the holder thereof be also a distiller and/or rectifier holding a license to distill and/or rectify alcoholic spirituous beverages, and the Tennessee winery license shall authorize the holder thereof to place the same in containers or bottles. Out of state wineries may be licensed as Tennessee wineries.

(c) Each applicant for a Tennessee winery license shall pay to the commission a one-time, non-refundable fee in the amount of three hundred dollars (\$300) when the application is submitted for review. Such license shall not be issued until a license fee of one hundred and fifty dollars (\$150) is paid to the commission by the winery, but issuance of the license is exempt from the requirements of § 57-3-106. The commission shall deposit collections with the state treasurer to be earmarked for and allocated to the commission for the purpose of the administration and enforcement of the duties, powers and functions of the commission.

(d) No Tennessee winery license shall be issued except to persons who have not been convicted, and whose officers and principals have not been convicted, within a period of five (5) years preceding application of any felony or any violation of any state or federal laws relating to alcoholic beverages.

(e) Notwithstanding the provisions of this section, a private individual in that person's own home may manufacture wine in an amount not in excess of that amount annually permitted as of March 22, 1973, by federal statute and regulations relative to household manufacture and consumption, provided that the same is for personal consumption by members of that person's household.

(f)

(1) A Tennessee licensed winery may serve wine without charge as complimentary samples for tasting at the winery and may sell wine at retail in sealed containers at the winery, but not for consumption on the bonded premises.

(2) A Tennessee licensed winery may donate wine without charge to nonprofit religious, educational or charitable institutions or associations.

(g) A Tennessee licensed winery may exchange wine in bulk with other wineries and no such bulk exchange, whether in return for wine or other consideration, shall be considered a sale subject to tax.

(h) In addition to its own wine, a Tennessee licensed winery located in Tennessee is authorized to sell the following items on the winery premises, and out of state Tennessee licensed wineries may sell such items as their state law permits:

(1) Juices or concentrates derived therefrom, or any agricultural products;

(2) Items used in home winemaking; and

(3) Other gift, tourism, or wine related items as defined by regulations duly promulgated by the commission.

(i) A Tennessee licensed winery located in Tennessee may sell no more than five (5) cases or sixty (60) liters of wine to any single retail customer in one (1) day. It shall be legal for any purchaser of wine from a Tennessee licensed winery to transport into and within the state of Tennessee no more than five (5) cases or sixty (60) liters of wine in one (1) day. Any wine transported pursuant to this section must be accompanied by a bill of sale sufficiently identifying the nature, quantity, purchaser, date and place of purchase of the wine. Bills of sales purchased from out of state Tennessee

licensed wineries must reflect that the wine was purchased for transport into Tennessee and that Tennessee taxes have been paid.

(j) Any licensee or other person who shall sell, furnish, dispose of, give, or cause to be sold, furnished, disposed of, or given, any wine in the state of Tennessee or for transport into the state of Tennessee, to any person under the age of majority as established by § 57-4-203(b), commits a misdemeanor.

(k) The commission is empowered and authorized to promulgate such rules and regulations as may be necessary to carry out the duties of the commission as provided in this section, including, but not limited to, procedures governing the production, sale and transportation of wine. The commissioner of revenue shall establish procedures governing the keeping of records for tax purposes and the payment of taxes by a winery licensed hereunder, and for any failure to comply with such procedures, the commissioner shall notify the commission, which is authorized to revoke or suspend the license of any winery.

(l) It is the duty of the commissioner of agriculture to disseminate the best information available as to the methods of cultivation of crops which may be utilized in Tennessee for the production of wine and the methods of making such wines. It is also the duty of the commissioner to establish reasonable procedures requiring proper sanitary conditions about the winery and to certify that these conditions have been met before the commission shall issue any license. The commissioner shall establish reasonable procedures requiring the process of producing wine to be carried on under proper sanitary conditions and in a sanitary manner, and for any failure to comply with such procedures, the commissioner shall notify the commission, which is authorized to revoke or suspend the license of any winery.

(m)

(1) Any nonprofit association organized to encourage and support grape growing and winemaking with ten (10) or more Tennessee licensed wineries as members shall be allowed to hold not more than eight (8) wine festivals per calendar year. Each festival shall not exceed a period of seventy-two (72) hours.

(2) Any Tennessee licensed winery participating in a festival authorized by this subsection (m) shall be allowed to transport, serve and offer complimentary samples of their wines for tasting at such festival. The complimentary sample size shall be restricted to a one-ounce (1 oz.) serving with only one (1) sample per person for each type of wine. Any person serving wine at such festival shall possess a server permit from the commission as described in part 7 of this chapter.

(3) Any Tennessee licensed winery participating in a festival authorized by this subsection (m) shall be allowed to transport wine produced by such winery to sell at the festival for consumption off premises.

(4)

(A) Any nonprofit association authorized by this subsection (m) to hold a wine festival shall apply for a special occasion license as defined in § 57-4-102, in order for participating Tennessee licensed wineries to serve complimentary samples as described in subdivision (m)(2) and to sell wine produced by such wineries for consumption off premises.

(B) Notwithstanding the provisions of § 57-4-102(30)(A), a special occasion license issued for a wine festival authorized by this subsection shall be for the duration of such festival for which application is made for a period not to exceed seventy-two (72) hours. A special occasion license issued pursuant to this subsection shall only be available upon the

payment of the fee as required by law for each separate day of the festival.

(C) A nonprofit association authorized to conduct a wine festival pursuant to this subsection (m) shall be permitted to hold such festival in any municipality or county of the state in the manner provided in subdivision (m)(5).

(5) A nonprofit association, as defined in subdivision (m)(1), is authorized to conduct a wine festival pursuant to this subsection (m) in a municipality or county of this state which has approved the sale of alcoholic beverages or has a licensed winery located in such municipality or county, subject to complying with all permit requirements of such municipality or county, and in all other municipalities or counties upon receiving approval of the legislative body of such municipality or county to hold such a festival at a location and in such manner authorized by such legislative body.

(n) If any provision of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring

it.