



## WINE INSTITUTE

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PRESIDENT AND CHIEF EXECUTIVE OFFICER

July 22, 2008

TO: WINE INSTITUTE MEMBERS  
FROM: BOBBY KOCH  
SUBJECT: AB 2004

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Wine Institute is pleased to announce that AB 2004 was signed by the Governor on July 16, 2008, and will take effect on January 1, 2009. Acting at the direction of our Public Policy Committee in November of 2007 for Wine Institute to find ways to repair and clarify legal ambiguities regarding winery picnic areas, Wine Institute actively sponsored and supported this legislation introduced by Assemblymember Noreen Evans. When the law takes effect on January 1, 2009, AB 2004 will do much more than address winery picnic areas. The new law will usher in a new era in winery hospitality, expanding upon the privileges currently enjoyed by winegrower licensees by allowing winegrowers to engage in on-sale activity at their bonded winery.

AB 2004 is good news not only for California wineries that have long maintained picnic areas in the state, but also for wineries that have long contemplated creative wine and food experiences that were not possible because of limitations in current law that limit tastings to approximate one-ounce samples. With the months we have before AB 2004 takes effect, we want to take every opportunity to educate Wine Institute members on the new law so that our members recognize and appreciate what AB 2004 does, and also how our winery members can exercise the new on-sale privilege responsibly.

We are distributing with this letter a copy of the final chaptered version of AB 2004 as well as the accompanying FAQ so that wineries can understand what the bill does and make plans to properly exercise the additional license privileges. We are reaching out as well to the California Department of Alcoholic Beverage Control's Licensee Education staff and hope to announce AB 2004 educational seminars and teleconferences in the future. In the meantime, please read through the FAQs and feel free to call or email us with any questions that remain unanswered. Calls may be directed to Mike Falasco, Wine Institute's California Legislative Representative, at (916) 441-6974, [mfalasco@wineinstitute.org](mailto:mfalasco@wineinstitute.org), and Wendell Lee, Wine Institute's General Counsel, at (415) 356-7534, [wlee@wineinstitute.org](mailto:wlee@wineinstitute.org).

Sincerely,

RPK:kc  
Attachments



## AB 2004 FREQUENTLY ASKED QUESTIONS

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### Introduction:

AB 2004 was approved by the Governor and signed into law on July 16, 2008. The bill, sponsored by Wine Institute, started out as an effort to repair and clarify legal ambiguities regarding winery picnic areas, but has evolved significantly. When the law takes effect on January 1, 2009, AB 2004 will begin a new era in California winery hospitality, expanding upon the privileges currently enjoyed by winegrower licensees by allowing winegrowers to engage in on-sale activity at their bonded winery. This is good news not only for wineries that have long maintained picnic areas in the state, but also for wineries that have contemplated creative wine and food experiences that were not possible because of provisions in current law that limit tastings to approximate one-ounce samples.

AB 2004 creates the opportunity for change in the ways that many wineries conduct their tasting room and winery hospitality activities. It is not only important for Wine Institute members to recognize and appreciate what AB 2004 does, but also how to exercise the new on-sale privilege responsibly.

AB 2004 has had many nicknames: the “Picnic Bill,” the “No Children at Winery” Bill, the “Wine Bar” Bill, among them. While convenient labels, none of these terms accurately describe what the bill does for California wineries. This document is intended to provide definitive information about AB 2004 and how it will affect your business.

Wine Institute is very pleased with the final version of AB 2004 and is proud to have sponsored this legislation. We are grateful for Assemblymember Noreen Evans and her efforts in helping us achieve this change as well as for the support of State Senator Patricia Wiggins. We concentrate our efforts now on making sure that our members understand what the new law will bring. We are distributing this FAQ to our members well ahead of the law’s effective date so that wineries can understand what the bill does and make plans to properly exercise the additional license privileges. We ask that you read through the questions and answers thoroughly, and that you feel free to call us with any questions that remain unanswered. Calls may be directed to Mike Falasco, Wine Institute’s California Legislative Representative, at (916) 441-6974, and Wendell Lee, Wine Institute’s General Counsel, at (415) 356-7534.

## GENERAL INFORMATION ON AB 2004:

- AB 2004 was chaptered on July 16, 2008.
- AB 2004 takes effect on January 1, 2009.
- AB 2004 allows licensed winegrowers (02 licensees) to sell wine to consumers for consumption ON THE PREMISES.
- The ability to sell wine to consumers for consumption ON THE PREMISES applies only to the primary 02 licensed facility and does not apply to areas licensed with a DUPLICATE WINEGROWER LICENSE, e.g., satellite secondary tasting room.
- Sales for on-premise consumption are not limited to bottled goods. Wineries may choose to sell wine by the glass or charge for multiple one-ounce pours of the same product.
- Children are not prohibited from tasting areas now and will not be prohibited from these areas when AB 2004 takes effect.
- AB 2004 also amends the wine “doggie bag” law so that consumers that have purchased and partially consumed a bottle of wine will be allowed to take home the partially consumed bottle of wine upon departure.

Q: Will AB 2004 allow me to sell consumers a bottle of wine from my tasting room to consume in my picnic area?

A: Yes. AB 2004 allows licensed winegrowers to sell wine to consumers for consumption on the premises. On and after January 1, 2009, assuming there are no local Use Permit restrictions and that your picnic area is part of your licensed premises, Winegrower licensees will be able to freely allow consumers to consume the bottle of wine that they purchased from your tasting room in your picnic area. But we want to make clear that the scope of the on-sale privilege is not restricted to bottled goods and can occur on any portion of a Winegrower’s licensed premises. Wineries may choose to sell wine by the glass, for example, and allow the consumer access to other winery areas – decks, patios, gardens, that are part of a Winegrower’s licensed area. Wineries that would like to open their picnic area to consumers should make sure that those areas are part of their licensed area. The on-sale privilege granted by AB 2004 does not extend to unlicensed areas. If a winery’s picnic area is not part of its licensed premises, wineries should not allow on-sale conduct to occur there.

Q: I don’t have a picnic area, but I do allow visitors to consume wine out on the deck/patio/garden area that’s part of my licensed area. That’s OK, isn’t it?

A: Yes. The scope of the on-sale privilege is not restricted to bottled goods and can occur on any portion of a Winegrower’s licensed premises. Wineries may choose to sell wine by the glass and allow the consumer access to other winery areas – decks, patios, gardens, that are part of a Winegrower’s licensed area.

Q: OK, so if my picnic area is not part of my licensed operation, I can't sell wine for consumption there. But what if I just make the picnic area available for consumers to enjoy a game of bocce ball, consume wine that they've purchased at the tasting room or any other winery, and eat their sandwiches?

A: AB 2004 only addresses on-sale conduct in licensed areas. Wineries that allow consumers to consume wine that they purchased in unlicensed areas that remain under a winery's control may be liable for misconduct under other statutes. California Business and Professions Code Section 25604, for example, states that any person maintaining an unlicensed place for the drinking of alcoholic beverages by members of the public constitutes a public nuisance and authorizes the Attorney General or district attorney to bring injunctive action to abate the nuisance.<sup>1</sup>

Q: So how do I include my picnic area / deck / garden as part of the licensed area?

A: Changes or extensions of wine premises may require winegrower licensees to submit new information to TTB as well as to the ABC. Each winery's situation will be different, but generally when a change is made to buildings or in the use of any portion of the premises, the winery is required to submit a notice to TTB (see 27 CFR Section 24.131 at [http://edocket.access.gpo.gov/cfr\\_2006/aprqtr/27cfr24.131.htm](http://edocket.access.gpo.gov/cfr_2006/aprqtr/27cfr24.131.htm) ). The notice must describe the proposed change in use on TTB Form 5120.25 (TTB forms are available at <http://www.ttb.gov/wine/forms.shtml>). On the State ABC level, wineries will have to contact their local ABC office and submit a new premises diagram on ABC Form 257.

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<sup>1</sup> **25604. Maintenance of unlicensed club room or drinking place**

It is a public nuisance for any person to maintain any club room in which any alcoholic beverage is received or kept, or to which any alcoholic beverage is brought, for consumption on the premises by members of the public or of any club, corporation, or association, unless the person and premises are licensed under this division. It is a public nuisance for any person to keep, maintain, operate or lease any premises for the purpose of providing therein for a consideration a place for the drinking of alcoholic beverages by members of the public or other persons, unless the person and premises are licensed under this division. As used herein "consideration" includes cover charge, the sale of food, ice, mixers or other liquids used with alcoholic beverage drinks, or the furnishing of glassware or other containers for use in the consumption of alcoholic beverage drinks.

The Attorney General or any district attorney may bring an action in the name of the people to abate the nuisance, and the Attorney General shall, upon request of the department, bring the action.

Q: Because I'm in a rural area, I've opened a winetasting room in town. Does AB 2004 mean that I can sell full glasses there now?

A: No. State law allows Winegrower licensees to exercise winetasting privileges at their place of production and one other remote location. These secondary tasting locations are licensed with a Duplicate Winegrowers License. AB 2004 takes effect on January 1, 2009, and only applies to a winegrower's primary 02 licensed premise and not to areas licensed by a duplicate winegrower's license. Therefore, duplicate winegrower areas that are established for winetastings would not be allowed under AB 2004 to conduct on-sale activities beyond the winetasting activities that are currently allowed. This doesn't mean that you can't charge for a winetasting at your duplicate location, but you must adhere to the winetasting format and remain within the "one ounce pour" rule.

Q: The on-sale privileges granted by AB 2004 sound great. My winery operates under a Use Permit that limits me to conducting winetastings by appointment only, with no more than 5 appointments on any given day. Does AB 2004 mean that I can now allow my visitors to consume full glasses of wine at the winery?

A: AB 2004 does not alter, diminish, replace, or eliminate the authority of a county, city, or city and county from exercising land use regulatory authority by law to the extent the authority may restrict, but not eliminate, privileges offered by the bill. Therefore, while AB 2004 expands the privileges of every licensed Winegrower within the state, Use Permit restrictions may need to be reconciled with local authorities to determine the scope of a winery's on-sale privilege. Since each Use Permit is different and unique, Wine Institute urges members interested in exercising on-sale privileges to review the provisions of their use permits and consult with professionals or the issuing agency for further clarification. Use Permits may have to be modified to allow for the exercise of AB 2004's on-sale privilege, and in most cases there will be a fee associated with processing of a Use Permit modification.

Q: I don't want to sell wine by the glass and I don't have a picnic area, but I still want to conduct winetastings. Am I REQUIRED by AB 2004 to sell wine for on-premise consumption?

A: AB 2004 permits, but does not require, winegrower licensees to engage in on-sale activity. A winery may elect only to conduct winetastings as prescribed by law without engaging in any form of on-sale activity. AB 2004 provides the privilege, but a winery has the right to choose not to exercise it.

Q: I read that if I begin to sell wine for consumption on my winegrower licensed premises, that I won't be allowed to have children present in the tasting/consumption area. Is that true?

A: Minors are generally not permitted to be present at on-sale licensees like night clubs and bars. The Department of Alcohol Beverage Control (ABC), at Wine Institute's urging, has provided a written legal opinion that wineries with Type 02 winegrower licenses are off-sale licensees and are not "public premises" under current law. The ABC further stated that even after AB 2004 becomes law, wineries would still be considered as off-sale licensees even though the legislation would give them the privilege to serve glasses or bottles of wine to its patrons for consumption on their licensed premise. Therefore, minors will continue to be allowed at the winery premises.

Q: So when January 1, 2009 comes along, I'll be able to start selling wine by the glass?

A: Assuming there are no local restrictions, every winegrower licensee will have the ability to sell wine to consumers for consumption on the premises as of January 1, 2009. With these new license privileges, however, come new responsibilities. Wineries choosing to exercise its on-sale privilege should be ready to assume these new responsibilities. Is your tasting room staff trained to handle their new server roles? Are you providing alternatives to wine? Will you be providing food?

Keep in mind, as well, that violations in the tasting room can jeopardize a winery's entire production operation. Wineries should be knowledgeable of wine service issues and seriously consider training opportunities for tasting room service and hospitality staff. Member wineries that do not have established training requirements may want to consider the California Department of Alcoholic Beverage Control's LEAD program (see <http://www.abc.ca.gov/programs/lead.html> for more information). LEAD training is approximately 3.5 hours and is free. LEAD's purpose is to provide high quality, effective and educationally sound training on alcohol responsibility and the law to California retail licensees and their employees. The LEAD Program provides licensees with practical information on serving alcoholic beverages safely, responsibly, and legally. We are planning on partnering with the Department in offering training materials and seminars in advance of AB 2004's effective date.

Q: So if I elect to simply conduct free winetastings, will AB 2004 allow me to pour samples larger than one ounce?

A: Winegrower licensees already have the privilege of conducting winetastings by providing samples of wines to consumers either free or for a fee. Winetastings are generally limited to an approximate one ounce pour of wine per brand and type of wine being presented. Within a winetasting context, a winegrower may choose not to charge for the samples. But pouring larger volumes of wine to a consumer could take the activity out of the realm of a winetasting and into the realm of an on-sale activity. While the one-ounce rule is not hard and fast, wineries need to be careful that their actions aren't interpreted as giving wine away for free in a non-winetasting activity. When in doubt, wineries should consider charging for glasses of wine that exceed a one-ounce pour in a winetasting context.

Q: Do consumers just recork their unconsumed wine when they leave the winery?

A: California traffic laws generally prohibit drivers and passengers from possessing any opened bottle containing alcoholic beverages, even if it has been recorked (California Vehicle Code Section 23223 at <http://www.dmv.ca.gov/pubs/vctop/d11/vc23223.htm>) while driving on California roads. Unfinished wine bottles should be recorked and kept in the trunk of the car. If the vehicle is not equipped with a trunk, the partially consumed wine bottle must be kept in "some other area of the vehicle that is not normally occupied by the driver or passengers." A utility compartment or glove compartment shall be deemed to be within the area occupied by the driver and passengers. (California Vehicle Code Section 23225 at <http://www.dmv.ca.gov/pubs/vctop/d11/vc23225.htm>).

## Assembly Bill No. 2004

### CHAPTER 127

An act to amend Sections 23358, 23390, and 23396.5 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor July 16, 2008. Filed with  
Secretary of State July 16, 2008.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2004, Evans. Alcoholic beverages: winegrowers: licenses.

The Alcoholic Beverage Control Act contains various provisions regulating the application for, the issuance of, the suspension of, and the conditions imposed upon, alcoholic beverage licenses by the Department of Alcoholic Beverage Control. Existing law authorizes a licensed winegrower to, among other things, sell wine and brandy for consumption to consumers for on-premises consumption, as specified.

This bill would authorize a licensed winegrower to sell wine for consumption to consumers for on-premises consumption.

*The people of the State of California do enact as follows:*

SECTION 1. Section 23358 of the Business and Professions Code is amended to read:

23358. (a) Licensed winegrowers, notwithstanding any other provisions of this division, may also exercise the following privileges:

(1) Sell wine and brandy to any person holding a license authorizing the sale of wine or brandy.

(2) Sell wine and brandy to consumers for consumption off the premises where sold.

(3) Sell wine to consumers for consumption on the premises.

(4) Sell all beers, wines, and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place as defined in Section 23038 of this code, which is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and which is operated by and for the licensee. At such bona fide public eating place beer, wine, and brandy may be used in the preparation of food and beverages to be consumed on the premises.

(b) A winegrower may also have upon the premises all beers, wines, and brandies, regardless of source, for sale or service only to guests during private events or private functions not open to the general public. Alcoholic beverage products sold at the premises that are not produced and bottled



by, or produced and packaged for, the winegrower shall be purchased by the winegrower only from a licensed wholesaler.

(c) A winegrower shall actually produce on his or her licensed premises by conversion of grapes, berries, or other fruit, into wine, not less than 50 percent of all wines sold to consumers on his or her licensed premise or premises and any licensed branch premise or premises.

(d) The department may, if it shall determine for good cause that the granting of any such privilege would be contrary to public welfare or morals, deny the right to exercise any on-sale privilege authorized by this section in either a bona fide eating place the main entrance to which is within 200 feet of a school or church, or on the licensed winery premises, or both.

(e) Nothing in this section or in Section 23390 is intended to alter, diminish, replace, or eliminate the authority of a county, city, or city and county from exercising land use regulatory authority by law to the extent the authority may restrict, but not eliminate, privileges afforded by these sections.

SEC. 2. Section 23390 of the Business and Professions Code is amended to read:

23390. A licensed winegrower or brandy manufacturer, in addition to exercising all the privileges of his or her license at his or her licensed premises, may exercise all his or her license privileges at or from branch offices or warehouses, or United States bonded wine cellars located away from his or her place of production or manufacture, other than production or manufacture, the sale of wine to consumers for consumption on the licensed premises, the sale of wine or brandy to consumers for consumption on the premises in a bona fide eating place, and the sale or delivery of wine to consumers in containers supplied, furnished, or sold by the consumer. The department shall, upon request, issue to a winegrower or brandy manufacturer a duplicate of his or her original license for a location or locations other than his or her wine production or brandy manufacture premises. The duplicate license authorizes the maintenance and operation of each branch or warehouse or United States bonded wine cellar declared and designated by the winegrower or brandy manufacturer at the location for which the duplicate license is issued. The fee for each duplicate winegrower's license and for each duplicate brandy manufacturer's license is as specified in Section 23320.

Notwithstanding the provisions of any other section of this division, a duplicate winegrower's license or duplicate brandy manufacturer's license shall be issued forthwith upon the application therefor. In the event any protest is received by the department concerning the issuance of the duplicate license, the protest shall be considered as an accusation against the licensee and a hearing had thereon as if an accusation had been filed.

For 30 days from the date of the issuance of the duplicate license, no retail sales of wine or brandy shall be made at any branch office for which a duplicate winegrower's license or duplicate brandy manufacturer's license is issued pursuant to this section.

Notwithstanding any other provision of law, the department may allow any person who held more than one original winegrower's license, on or before January 1, 1981, to transfer any duplicate license which has been issued, on or before January 1, 1981, on any of the original winegrower's licenses to any other original winegrower's license held by that person, on or before January 1, 1981, provided that the licensee cancels the original winegrower's license from which any duplicate license is transferred. This subdivision shall not authorize any person to acquire any additional duplicate licenses other than those held by that licensee on or before January 1, 1981.

SEC. 3. Section 23396.5 of the Business and Professions Code is amended to read:

23396.5. Notwithstanding any other provision of law, any on-sale licensee, which maintains a bona fide eating place in conjunction with such license, or any winegrower that is exercising a privilege pursuant to Section 23358, may allow any person who has purchased and partially consumed a bottle of wine to remove such partially consumed bottle from the premises upon departure.