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WINE TASTING ACTIVITIES IN VIRGINIA: IS AMERICA'S FIRST WINE PRODUCING STATE DESTINED TO WITHER ON THE VINE DUE TO OVERREGULATION?

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[W]ine being among the earliest luxuries in which we indulge ourselves, it is desirable it should be made here and we have every soil, aspect & climate of the best wine countries . . . lean & meagre spots of stony & red soil, without sand, resembling extremely the Cote of Burgundy from Chambertin to Monrachat where the finest wines of Burgundy are made.

-Thomas Jefferson¹

I. INTRODUCTION

Across the rolling landscape of the Virginia Piedmont, the Jeffersonian dream is awakening in force to realize the viticultural potential of the Old Dominion. Ideally positioned centrally in the mid-Atlantic states within less than a day's drive for tens of millions of potential customers, Virginia is poised to achieve its goal of becoming the eastern-seaboard capital of the U.S. wine industry by the year 2015.² Virginia farm wineries, however, cannot achieve Jefferson's dream without immediate action by state lawmakers to ensure that wineries can market their wines, promote wine tourism

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1. Letter from Thomas Jefferson to John Dortie (Oct. 1, 1811), in THE THOMAS JEFFERSON PAPERS SERIES 1, GENERAL CORRESPONDENCE, 1651-1827 (part of the American Memories Collection on file with the Library of Congress), available at <http://memory.loc.gov/master/mss/mtj/mtj1/045/0600/0608.jpg> (discussing viticulture in Virginia).

2. See Katie Bye, *Virginia Wine Industry Ripens for Growth*, THE CAVALIER DAILY, Sept. 25, 2006, available at http://www.cavalierdaily.com/CVArticle_print.asp?ID=14495&pid951.

through wine tasting activities at the wineries, and take advantage of the booming American wine industry.

In 1934, Americans consumed 33 million gallons of wine.³ Seventy years later, the consumption rate in the United States had grown to 668 million gallons, an increase of 1,924%.⁴ Americans consumed nearly 100 million gallons more wine in 2004 than they did in 2000.⁵ The United States is now third worldwide in wine consumption behind France and Italy.⁶

The vast majority of American wine is produced in California; but, over the past decade, the wine industry has expanded to other states, including Virginia.⁷ Wine was first produced in Virginia in 1608.⁸ But despite the efforts of early American colonists and several founding fathers, including Thomas Jefferson, George Washington, and James Madison,⁹ the industry was slow to develop, and by 1979 there were only six wineries in existence in the state.¹⁰ However, by early 2004, the Virginia wine industry had experienced tremendous growth and the state then had over 80 wineries, twice as many as existed in the state just ten years ago.¹¹

3. WINEINSTITUTE.ORG, WINE CONSUMPTION IN THE U.S. 1934-2004 (2004), http://www.wineinstitute.org/communications/statistics/consumption1934_99.html.

4. *Id.* By comparison, the total U.S. population (including non-drinking age) increased 134.2% from 126,373,773 in 1934 to 293,656,842 in 2004. U.S. CENSUS BUREAU, HISTORICAL NATIONAL POPULATION ESTIMATES: JULY 1, 1900 TO JULY 1, 1999 (2000), available at <http://www.census.gov/popest/archives/1990s/popclockest.txt>; U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE POPULATION FOR THE UNITED STATES, REGIONS, AND DIVISIONS: APRIL 1, 2000 TO JULY 1, 2005 (2005), available at <http://www.census.gov/popest/states/NST-ann-est.html>.

5. WINEINSTITUTE.ORG, WINE CONSUMPTION IN THE U.S. 1934-2004, *supra* note 3.

6. WINEINSTITUTE.ORG, WORLD WINE CONSUMPTION IN LISTED COUNTRIES 1997-2001 (2004), http://www.wineinstitute.org/industry/keyfacts/world_wine_consumption.php.

7. *See* WINEINSTITUTE.ORG, WINE PRODUCTION (2006), http://www.wineinstitute.org/industry/keyfacts/wine_production.php.

8. Va. Wineries Ass'n, *A History of Virginia Wine*, available at <http://www.virginiawines.org/about/history.pdf> (last visited Nov. 12, 2006).

9. Gordon W. Munchie, *Virginia First in Wine*, GRAPEVINE MAG., Sept./Oct. 2005, available at <http://www.virginiawinefestival.org/downloads/Virginia%20First%20in%20Wine.pdf>.

10. Nan Johnson & Mary Davis-Barton, *Nearly 300 Wines Vie for Top Honors in 2004 Virginia Governor's Cup Wine Competition*, VA. WINERIES ASS'N, June 3, 2004, <http://www.virginiawines.org/news/2004/060304winners.html>.

11. *Id.*

In 2004, Virginia Governor Mark R. Warner initiated a Wine Study Work Group (the Study Group) that culminated in Vision 2015: A Strategic Direction for the Virginia Wine Industry ("Vision 2015").¹² The Study Group used the Australian Wine Industry as a model for a strategic plan for all sectors of the wine industry to follow to achieve the vision statement of doubling Virginia's wine industry market share and reaching measurable sales on the national level.¹³ In 2005, one year after the study was completed, Virginia experienced record growth when twelve new wineries opened in the state.¹⁴ Four centuries after wine was first produced in the state, Virginia is now home to over one hundred wineries and viticulture, and wine making in the state has the potential to continue to grow.¹⁵

One of the primary ways that Virginia farm wineries, particularly new ones, market their products is through wine tasting activities at the winery or in the vineyards.¹⁶ Vision 2015 recognizes that activities and consumer wine tastings are essential to expanding the national market share of Virginia wines and improving profitability of vineyard and wine making businesses.¹⁷ Among other things, the Study Group suggested "evaluating the feasibility of a Virginia Wine Trails Program."¹⁸ Wine tasting activities would be essential to the success of such a program.

As the Virginia wine industry continues to grow, vintners strive to increase demand and otherwise market their wines through wine tasting activities. But in certain instances, these activities have caused tension with neighboring property owners who oppose increased traffic and noise, real or perceived, near their homes.¹⁹ The tension

12. GOVERNOR'S WINE STUDY WORK GROUP, VISION 2015: A STRATEGIC DIRECTION FOR THE VIRGINIA WINE INDUSTRY (2004) [hereinafter VISION 2015], available at <http://www.virginiawines.org/strategicplan04.html>.

13. *Id.*

14. Cindy Cates, *Record Number of New Virginia Wineries to Open in 2005*, VA. WINERIES ASS'N, Apr. 8, 2005, <http://www.virginiawines.org/news/2005/040805new.html>.

15. Va. Wineries Ass'n, *After Four Centuries, Virginia Wines Have Come of Age*, <http://www.virginiawines.org/about/index.html> (last visited Nov. 12, 2006).

16. See Laura Lee Madonna, *Marketing 'Brand' Virginia: Government Funds and Dedicated Vintners Help Virginia Wineries Association Support Industry Growth*, WINE BUS. MONTHLY, May 1, 2002, available at <http://www.winebusiness.com/html/MonthlyArticle.cfm?dataID=17102>.

17. VISION 2015, *supra* note 12, §§ 3.14, 3.15, 4.1.

18. *Id.* § 3.11.

19. See Ann Heidig, *Message in the Bottle: President's Message*, VA. WINERIES ASS'N, Apr. 2006, <http://www.virginiawines.org/enews/2006/April/>.

between farm wineries and neighbors has created legal questions about the ability of winery owners and operators to conduct wine tasting activities, including wine tasting lunches, wine tasting dinners, weddings, wine related receptions and the like, and the extent to which such wine tasting activities are subject to regulation by localities.²⁰

This issue is just one in a series of recent problems encountered by the Virginia wine industry that threatens to undermine the principles and strategies of Vision 2015. Virginia farm wineries, particularly small wineries, were first negatively affected by the federal court decision in *Bolick v. Roberts*,²¹ which struck down Virginia's former regulatory scheme.²² That scheme allowed Virginia farm wineries to ship wine directly to persons inside and outside the state while prohibiting direct shipments from wine producers located outside the state who did not go through a licensed Virginia wholesaler or retailer.²³ The issues in the *Bolick* case are similar to those in the 2005 Supreme Court decision of *Granholm v. Heald*,²⁴ about which much has been written. The *Bolick* decision also found that the Virginia ABC (Alcoholic Beverage Control) Board's practice of only selling Virginia wines in ABC stores was unconstitutional in violation of the Dormant Commerce Clause.²⁵ Following *Bolick*, the General Assembly passed a law signed by Governor Warner that granted farm wineries the ability to apply for a wine shipper's license, which would give them the ability to self-distribute wine in limited quantities for personal consumption and not for resale.²⁶ During the 2006 regular session, a bill was tabled that would have allowed farm wineries to distribute directly to retailers and restaurants, meaning that wineries

20. PearmundCellars.com, *News for January 2006*, http://www.pearmundcellars.com/news/News_2006_0125.shtml (last visited Nov. 12, 2006); see also VA. CODE ANN. § 15.2-2288.3 (2006) (temporarily prohibiting local governments from requiring any more restrictive special exceptions and use permits); Pat Kane, *Senate Amends Winery Legislation*, FAUQUIER-DEMOCRAT/THE FAUQUIER CITIZEN, Mar. 7, 2006, available at http://www.timescommunity.com/site/index.cfm?newsid=16261332&BRD=2553&PAG=461&dept_id=576934&rfti=8.

21. 199 F. Supp. 2d 397 (E.D. Va. 2002) *mem., vacated and remanded*, *Bolick v. Danielson*, 330 F.3d 274 (4th Cir. 2003).

22. *Bolick*, 199 F. Supp. 2d at 417.

23. *Id.* at 408.

24. 544 U.S. 460 (2005).

25. *Bolick*, 199 F. Supp. 2d at 409.

26. VA. CODE ANN. § 4.1-112.1 (1999).

must still use licensed wine wholesales for such distributions.²⁷ This additional cost of distribution severely reduces the profits of small farm wineries.²⁸ Further, many farm wineries are experiencing considerable difficulty even securing a distributor willing to, or interested in, carrying their wines because of the low-volume demand that the majority of farm wineries generate.²⁹ An additional setback was dealt to the farm wineries during the 2006 regular session when another bill intended to remedy the inability to distribute in ABC stores as a result of the *Bolick* decision was also tabled.³⁰ As a result of these decisions, Virginia farm wineries lost the ability to self-distribute their wines entirely, and their ability to distribute through traditional distribution channels continues to be severely limited due to market forces controlled by distributors.³¹ Virginia farm wineries have also lost valuable shelf space in hundreds of ABC stores, a location where they formerly did not compete with wines from larger markets such as California.³²

Several recent court decisions give Virginia farm wineries reason to believe that they will regain the ability to self-distribute. In April 2006, the United States District Court for the Western District of Washington struck down many distribution restrictions in Washington's three-tier system as being in violation of the Sherman Act of 1890 and held that the state's practice of permitting in-state wineries to ship directly to retailers, while prohibiting out-of-state wineries from doing so, was unconstitutional in violation of the Commerce Clause.³³ Many winery owners are hopeful that the

27. H.R. 1288, 306th Gen. Assem., Reg. Sess. (Va. 2006).

28. Va. Wineries Ass'n, *Virginia Farm Wineries Lose Right to Self Distribute*, Feb. 1, 2006, <http://www.virginiawines.org/about/index.html>.

29. See Greg Edwards, *Wineries' Big Blow: Loss of Right to Self-Distribute May Put Some Out of Business*, RICH. TIMES-DISPATCH, July 8, 2006, at A1, available at <http://www.virginiawines.org/display/Times070806.pdf>.

30. H.R. 1353, 306th Gen. Assem., Reg. Sess. (Va. 2006).

31. See Va. Wineries Ass'n, *Virginia Farm Wineries Lose Right to Self Distribute*, *supra* note 28.

32. See Va. Vineyards Ass'n, *Fact Sheet on Wine Issues in Virginia Federal Court*, July 8, 2005, http://virginiavineyardsassociation.com/child/Articles/fact%20sheet%20on%20Virginia%20lawsuits%20_2_.pdf.

33. *Costco Wholesale Corp. v. Hoen*, No. 04-360, 2006 U.S. Dist. LEXIS 27141, at *2-4, 9-10, 26-27, 33, 36 (W.D. Wash. 2006), *amended by*, 2006 U.S. Dist. LEXIS 33925 (2006) (clarifying the district court's ruling in favor of Costco on the Commerce Clause violation).

*Costco Wholesale Corp. v. Hoen*³⁴ ruling will allow them to distribute directly to retailers. On September 11, 2006, a divided Fourth Circuit Court of Appeals held that state-owned and -operated ABC stores in Virginia could constitutionally market and sell wine produced exclusively at Virginia farm wineries.³⁵ At the present time, it is unclear how the legal issues surrounding self-distribution and sales in Virginia ABC stores will be ultimately resolved, but Virginia farm wineries are relieved for now to have their wines back in ABC stores.³⁶ Experiencing the inability to self-distribute and watching their wines get pulled from the shelves of ABC stores was deeply concerning for Virginia farm-winery owners, making them acutely aware of their dependence on wine tasting activities as a method of marketing and selling their wines.

Compounding the farm wineries' problems, some Virginia localities, in response to complaints from neighbors, have imposed significant regulations on farm wineries through zoning ordinances that affect the ability of wineries to conduct wine tasting activities.³⁷ In response, the Virginia General Assembly passed a law during the 2006 regular session that prohibits localities from using special exceptions or special use permits for regulating the processing of wine at farm wineries and prohibits localities from adopting special exceptions and use permits that are more restrictive than the ones in place on January 1, 2006.³⁸ The law temporarily preserves the status quo while the Office of the Secretary of Agriculture and Forestry, in coordination with various agencies and organizations, continues a year-long study into the farm winery industry in Virginia.³⁹

This Article examines the growth of the wine industry in the United States and Virginia. It summarizes Virginia law regulating wine tasting activities at farm wineries, surveys the laws governing wine tasting activities from other leading wine producing states, and concludes that Virginia should look west for a model for its farm winery legislation and regulations—to California, Washington, and Oregon where the wine industry has a successful history as well as recent growth. These states protect the ability of wineries to conduct wine tasting activities while giving due regard for the concerns of

34. No. 04-360, 2006 U.S. Dist. LEXIS 27141, *1 (W.D. Wash. 2006).

35. *Brooks v. Vasser*, 462 F.3d 341, 360 (4th Cir. 2006).

36. See *Edwards*, *supra* note 29.

37. *PearmundCellars.com*, *News for January 2006*, *supra* note 20.

38. H.R. 1435, 306th Gen. Assem., Reg. Sess. (Va. 2006).

39. 2006-3 Va. Adv. Legis. Serv. 530 (LexisNexis).

neighbors and preservation of the rural environment.⁴⁰ This approach is essential to ensuring the continued success of the Commonwealth's wine industry, one of the few agricultural industries not declining in Virginia.⁴¹

II. GRAPE AND WINE PRODUCTION IN THE TOP U.S. STATES

In 2004, the U.S. Treasury's Alcohol and Tobacco Tax and Trade Division estimated that 3,726 wineries produced 2.3 billion liters (608 million gallons) of wine in this country.⁴² The U.S. wine industry "employed 23,284 individuals, with a total payroll of \$1,045.4 million," and the value of wine shipments, as estimated by the U.S. Department of Commerce, reached \$9.1 billion.⁴³ Of the total amount of wine produced in this country in 2004, "[a]t 2.04 billion liters, California accounted for 89 percent, followed by New York with 5 percent (114.3 million liters), Washington with 2.9 percent (66.25 percent), Oregon with 0.4 percent (10 million liters), New Jersey with 0.25 percent (5.8 million liters), and Virginia with 0.13 percent (2.86 million liters)."⁴⁴

The first commercial winery in California's Napa Valley was established in 1861, "and by 1889 there were more than 140 wineries

40. See discussion *infra* Part V.D-F.

41. Virginia Naturally, *Virginia's Agricultural Resources*, <http://www.vanaturally.com/guide/agriculture.html> (last visited Nov. 12, 2006); Bye, *supra* note 2; see, e.g., U.S. DEP'T OF AGRIC., NAT'L AGRIC. STATISTICS BD., NONCITRUS FRUITS AND NUTS: FINAL ESTIMATES FOR 1987-92, STATISTICAL BULLETIN NO. 900, available at <http://usda.mannlib.cornell.edu/datasets/specialty/95900/sb900.txt>; U.S. DEP'T OF AGRIC., NAT'L AGRIC. STATISTICS BD., NONCITRUS FRUITS AND NUTS: FINAL ESTIMATES FOR 1992-97, STATISTICAL BULLETIN NO. 950a, available at <http://usda.mannlib.cornell.edu/usda/reports/general/sb/b9501298.pdf>; U.S. DEP'T OF AGRIC., NAT'L AGRIC. STATISTICS BD., NONCITRUS FRUITS AND NUTS: FINAL ESTIMATES FOR 1997-2002, STATISTICAL BULLETIN NO. 985(03), available at <http://usda.mannlib.cornell.edu/usda/reports/general/sb/sb985.pdf>; U.S. DEP'T OF AGRIC., NAT'L AGRIC. STATISTICS BD., NONCITRUS FRUITS AND NUTS: 2005 PRELIMINARY SUMMARY, STATISTICAL BULLETIN FR. NT. 1-3(06), available at <http://usda.mannlib.cornell.edu/reports/nass/fruit/pnf-bb/ncit0106.pdf>.

42. DONALD A. HODGEN, U.S. DEP'T OF COMMERCE, OFFICE OF HEALTH AND CONSUMER GOODS, 2005 U.S. WINE OUTLOOK 1 (2005) available at http://www.ita.doc.gov/td/ocg/outlook05_wine.pdf.

43. *Id.*

44. *Id.*

in operation."⁴⁵ One hundred years later, in 1989, California wine growers produced 2,190,000 tons of grapes for wine, 95.6% of the total wine grapes produced in the United States.⁴⁶ Today, "California is the fourth largest wine producer in the world after France, Italy and Spain"; the Napa Valley region is home to more than 260 of the estimated 1,367 wineries in the entire state of California, and the state's wine industry continues to grow.⁴⁷

In 1987, the production levels of California (2,496,000 tons), New York (95,400 tons),⁴⁸ and Washington (40,500 tons) respectively accounted for 99.4% of the country's total wine-grape production, with Pennsylvania (6,900 tons) the next largest producer.⁴⁹ All other states in 1987 combined, produced 8,210 tons.⁵⁰ Estimates for Oregon began in 1988 when the state produced 7,750 tons.⁵¹

A decade later, in 1997, California, New York, and Washington accounted for 99.1% of the total production of grapes for wine in the United States, with production levels of 2,895,000, 44,000, and 62,000 respectively.⁵² Oregon was the next largest producer at 18,500 tons, having surpassed Pennsylvania, which produced 6,000 tons.⁵³ All other states contributed 10,900 tons.⁵⁴ In ten years, the country's total production had increased from 2,647,010 tons to 4,034,000

45. Napavintners.com, *History of Napa Valley Winegrowing - An Overview*, <http://www.napavintners.com/region/rwhisovr.html> (last visited Nov. 12, 2006).

46. U.S. DEP'T OF AGRIC., FINAL ESTIMATES FOR 1987-92, *supra* note 41.

47. Wine Institute, *California Wine Has \$45.4 Billion Economic Impact on State: Report Indicates Nearly 40 Percent Growth in Four Years*, June 22, 2004, <http://www.wineinstitute.org/communications/statistics/Economic%20Impact%20Report%202004.htm>.

48. New York produced significantly more wine grapes in 1987 than in subsequent years: 61,500 tons in 1988, 56,700 in 1989, 54,700 in 1990, 71,000 in 1991, and 58,000 in 1992. U.S. DEP'T OF AGRIC., FINAL ESTIMATES FOR 1987-92, *supra* note 41. From 1993 to 2005, New York produced a mean of 46,770 tons of wine grapes, with a median of 43,000 (2003), a mode of 41,000 (1993, 2000-2001), a high of 82,000 in 1994 and a low of 36,000 in 1998. FINAL ESTIMATES FOR 1992-97, *supra* note 41. While the 1987 production level appears to be somewhat of an aberration, New York's production levels do appear to be declining. The reason for this decline was not examined by this Article, but one could assume that it opens the door for other states to seize a share of the wine market, particularly states with more wine-friendly laws that permit wine tasting activities at wineries.

49. U.S. DEP'T OF AGRIC., FINAL ESTIMATES FOR 1987-92, *supra* note 41.

50. *Id.*

51. *Id.*

52. U.S. DEP'T OF AGRIC., FINAL ESTIMATES FOR 1997-2002, *supra* note 41.

53. *Id.*

54. *Id.*

tons.⁵⁵ Production estimates for Virginia were not made until 2001 when the state yielded 4,200 tons of total production and 3,800 tons of total utilized production.⁵⁶

By 2005, with production levels of 3,849,000, 40,000, and 110,000, California, New York, and Washington's market share had slipped again to 98.3% of the total U.S. production of 4,068,070 tons of grapes for wine.⁵⁷ Oregon remained the next largest producer with 22,800 tons, and Pennsylvania followed with 16,300 tons.⁵⁸ The next two largest producing states were Texas with 8,500 tons and Virginia with 4,650 tons.⁵⁹ All other states combined, produced 16,820 tons, including Michigan with 4,600 tons, Missouri with 3,830 tons, North Carolina with 3,700 tons, and Ohio with 1,400 tons.⁶⁰

III. GRAPE AND WINE PRODUCTION IN VIRGINIA

Virginia's wine industry dates to the early seventeenth century when the first English settlers planted vines and made wine at the Jamestown Colony around 1608.⁶¹ The first settlers made wine with grapes from England, but the colonists soon became determined to grow their own grapes on Virginia soil.⁶² In 1623, the Virginia House of Burgesses enacted a law that required every householder to set aside a quarter-acre of land yearly for the purpose of growing grapes and making wine.⁶³ In 1769, the General Assembly passed legislation called "An Act for the Encouragement of the Making of Wine."⁶⁴ Our country's Founding Fathers and Sons of Virginia, George Washington, Thomas Jefferson, and James Madison, all contributed to the development of a wine industry in Virginia through their interest in viticulture and enology.⁶⁵ It was Jefferson who was most active in establishing a Virginia wine industry, and in 1773, he allowed Italian winemaker Filippo Mazzei to plant vinifera grape plants on two

55. *Id.*; U.S. DEP'T OF AGRIC., FINAL ESTIMATES FOR 1987-92, *supra* note 41.

56. U.S. DEP'T OF AGRIC., FINAL ESTIMATES FOR 1997-2002, *supra* note 41.

57. U.S. DEP'T OF AGRIC., 2005 PRELIMINARY SUMMARY, *supra* note 41.

58. *Id.*

59. *Id.*

60. *Id.*

61. HODGEN, *supra* note 42, at 5; *see also* Va. Wineries Ass'n, *A History of Virginia Wine*, *supra* note 8.

62. ALLEN E. LEE & HILDE G. LEE, VIRGINIA WINE COUNTRY 11-12 (1987).

63. *Id.* at 12.

64. *Id.* at 14.

65. *See id.* at 18-22.

thousand acres adjacent to Monticello.⁶⁶ Jefferson and Mazzei's initial success was thwarted by the Revolutionary War and ultimately never reached fruition.⁶⁷ In the 1960s and 1970s, Virginia experienced a rebirth of and new interest in its wine industry.⁶⁸ The 1975 Virginia Farm Winery Act was designed to stimulate the growth of the industry by providing tax incentives for wineries making wine from Virginia grapes and establishing a monetary fund for research, education, and promotion of Virginia wines.⁶⁹ The 1980 amendments allowed farm wineries to act as wholesalers and retailers, as well as producers, of Virginia wine.⁷⁰ This legislation is certainly one reason that Virginia's wine industry has grown from six wineries in 1979 to over one hundred today.

The U.S. Department of Agriculture began estimating production of grapes for wine in Virginia in 2001, and in that year, Virginia was the seventh largest producing state with 3,800 tons of grapes.⁷¹ In the next three years, utilized production in Virginia was 4,600 tons in 2002, 3,600 in 2003, 3,700 in 2004, and 5,600 in 2005.⁷²

Virginia's acreage of grape crops increased from 1,418 acres in 1995 to 2,360 in 2004, an increase of 66%,⁷³ and in 2004, Virginia

66. *Id.* at 18-19.

67. *Id.* at 19.

68. *Id.* at 29.

69. Kari Lomanno, *Good Spirits: Virginia Wine Just May be the State's New Cash Crop*, THE HAMPTON ROADS BUS. J., Mar. 3, 2003, available at <http://www.insidebiz.com/output.cfm?ID=2414979>.

70. Madonna, *supra* note 16.

71. See U.S. DEP'T OF AGRIC., NAT'L AGRIC. STATISTICS BD., VIRGINIA COMMERCIAL GRAPE REPORT (2001), available at <http://www.nass.usda.gov/va/graperel.pdf>. Virginia was tenth in total grape production, including Vinifera, Hybrid, and American grape varieties with 4,200 tons. *Id.* See also U.S. DEP'T OF AGRIC., FINAL ESTIMATES FOR 1997-2002, *supra* note 41.

72. U.S. DEP'T OF AGRIC., NAT'L AGRIC. STATISTICS BD., VIRGINIA COMMERCIAL GRAPE REPORT (2003), available at http://151.121.3.33/Statistics_by_State/Virginia/Publications/Grape_Report/2003%20grape%20publication.pdf; U.S. DEP'T OF AGRIC., NAT'L AGRIC. STATISTICS BD., VIRGINIA COMMERCIAL GRAPE REPORT (2004), available at http://151.121.3.33/Statistics_by_State/Virginia/Publications/Grape_Report/2004%20grape%20publication.pdf; U.S. DEP'T OF AGRIC., NAT'L AGRIC. STATISTICS BD., VIRGINIA COMMERCIAL GRAPE REPORT (2005), available at http://151.121.3.33/Statistics_by_State/Virginia/Publications/Grape_Report/2005%20grape%20report.pdf (stating that during this time period, Virginia was tenth place in 2002 and 2004).

73. U.S. DEP'T OF AGRIC., VIRGINIA COMMERCIAL GRAPE REPORT (2004), *supra* note 72.

wineries produced 3,700 tons of total grapes.⁷⁴ In 2005, Virginia gained 100 bearing acres and its wineries produced 4,900 tons of grapes (4,650 tons for wine), making it the ninth largest state in total grape production and seventh for vinifera grapes.⁷⁵ As the number of acres in Virginia devoted to viticulture increases, especially considering the number of new wineries gained in 2005, the production level will surely follow.

In 2005, in Virginia, ninety-seven registered wineries and over 300 independently-owned vineyards produced over 782,700 gallons of wine, making Virginia the sixth largest wine producing state.⁷⁶ The Virginia wine industry provides jobs for over 1,000 individuals.⁷⁷ In 2002, production and sales of Virginia wine were estimated to generate between \$45.8 and \$69.2 million per year, and wine-related tourism contributed \$26.5 million to the state's economy.⁷⁸ Today, the economic impact has surely increased when one considers the dramatic increase in wineries since 2002 and the more than 300 wine festivals and events that now take place every year and draw hundreds of thousands of people to Virginia.⁷⁹ It has been estimated that 40% of Virginia's 600,000 annual visitors are wine tourists.⁸⁰ The potential for even larger growth can be realized as evidenced by Oregon's progressive laws governing farm winery wine tasting activities and the dramatic success of the industry in that state.⁸¹

74. *Id.*

75. U.S. DEP'T OF AGRIC., VIRGINIA COMMERCIAL GRAPE REPORT (2005), *supra* note 72.

76. *See* HODGEN, *supra* note 42.

77. *Id.*; *see also* *An Analysis of the Economic Impact of Virginia's Wine Industry*, Center for Public Policy, Virginia Commonwealth Univ., Sept. 2002 (providing further reading on employment by the Virginia Wine Industry), available at http://www.ita.doc.gov/td/ocg/outlook05_wine.pdf.

78. WineBusiness.com, *Virginia Wine Industry Economic Impact Estimated at \$95.7 Million*, WINE BUS. INSIDER, Nov. 1, 2002, at 6, available at www.humanitaswines.com/humanitas/servlet/streamfile?file_record_id=1003.

79. *See* Rebecca Penovich, *Go Local 2006: Virginia Wines Demonstrate Quality, Character, Virginia Wine Guide*, <http://www.virginiawineguide.com/wineTouring03/> (last visited Nov. 12, 2006); *see also* Va. Wineries Ass'n, *Virginia Winery Festivals & Sponsored Events 2006*, <http://www.virginiawines.org/events/index.html> (last visited Nov. 12, 2006).

80. Madonna, *supra* note 16.

81. *See* FULL GLASS RESEARCH, *THE ECONOMIC IMPACT OF THE WINE AND GRAPE INDUSTRIES ON THE OREGON ECONOMY 2* (2006), available at <http://www.oregonwine.org/docs/EISFinal.pdf>.

IV. VIRGINIA FARM WINERY LAW

A. *Alcoholic Beverage Control Law (Farm Winery Act)*

A Virginia farm winery is "an establishment located on a farm in the Commonwealth with a producing vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than fourteen percent alcohol by volume."⁸² The Virginia Alcoholic Beverage Control Board ("Virginia ABC") issues two classes of "farm winery" licenses requiring different percentages of products grown or produced in the Commonwealth.⁸³

Virginia ABC has exclusive regulatory control over alcoholic beverages in the Commonwealth.⁸⁴ And Virginia localities are prohibited by state law from regulating by ordinance the "manufacture, bottling, possession, sale, distribution, handling, transportation, drinking, use, advertising or dispensing of alcoholic beverages in the Commonwealth."⁸⁵ Further, Virginia ABC is expressly granted the regulatory authority to refuse to grant a license if the licensed premise "[i]s so located with respect to any residence or residential area that the operation of the premises would adversely

82. VA. CODE ANN. § 4.1-100 (2006).

"Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing (i) sugar, including honey and milk, either with or without additional sugar; (ii) one-half of one percent or more of alcohol by volume; and (iii) no product of distillation. The term includes any wine to which wine spirits have been added, as provided in the Internal Revenue Code, to make products commonly known as "fortified wine" which do not exceed an alcohol content of twenty-one percent by volume.

Id. See 3 VA. ADMIN. CODE § 5-40-20 (2006) (stating the requirements for approval of wine sold in the Commonwealth).

83. § 4.1-100. A Class A farm winery license requires that at least fifty-one percent fruit or agricultural products used are grown on the farm and that no more than twenty-five percent are grown outside the state. For a Class B farm winery the requirements are that seventy-five percent of products used to manufacture the wine are produced in the state and no more than twenty-five percent produced outside the state, and the owner must have operated the winery for at least seven years. Exceptions are allowed in cases of severe weather or disease. *Id.* § 4.1-219; see 3 VA. ADMIN. CODE § 5-70-160(A) (2006) (percentage of Virginia products).

84. § 4.1-103.

85. § 4.1-128.

affect real property values or substantially interfere with the usual quietude and tranquility of such residence or residential area."⁸⁶

Among the licenses issued by Virginia ABC is the farm winery license.⁸⁷ A Virginia farm winery license holder is authorized to manufacture wine from Virginia grapes and sell and ship the wine to the Virginia ABC Board, licensed wholesalers, and to persons outside the state.⁸⁸ A farm winery must apply for a wine shipper's license in order to directly ship to consumers.⁸⁹ Additionally, a farm winery licensee may sell wine at retail for on-premise consumption and in closed containers for off-premise consumption at the winery premises and at two additional approved remote retail establishments.⁹⁰

A licensed farm winery may give, at no charge, samples of its own wine to winery visitors of legal drinking age for consumption in an approved hospitality room on the winery premises.⁹¹ Virginia ABC also issues a "tasting" license that a farm winery could apply for, which would authorize the holder to sell or give samples in designated areas at events held by the licensee "for the purpose of featuring and educating the consuming public about the . . . [wine] being tasted."⁹² A tasting license holder must apply for a separate tasting license for each day of the tasting event, and no more than four tasting licenses shall be issued annually to any one person.⁹³ Samples given or sold pursuant to a tasting license may not exceed two ounces per person of each product tasted, and no more than four products may be offered.⁹⁴

86. § 4.1-222(2)(d).

87. § 4.1-207(5); *cf.* § 4.1-207(1) (Winery license).

88. § 4.1-207(1), (5); *see* § 3.1-1064.1 ("Winegrower").

89. § 4.1-112.1(A).

90. § 4.1-207(5); 3 VA. ADMIN. CODE § 5-70-160(C) (2006); *see* § 5-60-30(A)-(B) (giving the procedures for retail off-premise winery licenses); *see also* § 5-60-50(3) (2006) (giving the records required of farm winery licensees).

91. § 5-70-100(B)(3)(a) (2006) (stating an exception to the general prohibition against gifts of alcohol). A farm winery may also host events for certain religious, charitable, and other associations and foundations on the licensed premises or on property adjacent thereto, and participate in wine tastings sponsored by a licensed gourmet shop. *Id.* § 5-70-100(B)(3)(b), (C).

92. VA. CODE ANN. § 4.1-206(5) (2006). This statute also lists other licenses that a farm winery could obtain, such as banquet facility licenses, bed and breakfast licenses, and equine sporting event licenses. *Id.* § 4.1-206(3)-(4), (7).

93. § 4.1-206(5); § 4.1-221.1.

94. § 4.1-221.1.

B. Wineries as an Agricultural Use Protected Under Virginia Law

Virginia farm wineries benefit from certain unique protections under the law. First, a farm winery is an agricultural use in Virginia.⁹⁵ Second, the wine produced at a winery is considered by Virginia law to be an agricultural product in the hands of the producer.⁹⁶ Third, as a producer of agricultural products, the winery operations fall under the Virginia Right to Farm Act.⁹⁷ The Virginia Right to Farm Act provides, in part, that no county shall adopt an ordinance that requires a special exception or a special-use permit for agricultural production in an agricultural district.⁹⁸ Lastly, as discussed above, the process by which the vintner's product enters the market falls comprehensively and exclusively within the regulatory control of the Virginia Alcoholic Beverage Control Act.⁹⁹

The Virginia General Assembly has delegated authority to localities to regulate alcohol within their respective jurisdictions primarily through their zoning power.¹⁰⁰ A Virginia locality may regulate uses of land, buildings, and structures, among other things, for agricultural, business, industrial, residential, and other specific uses for specific purposes.¹⁰¹ However, in Virginia, a county's zoning power is not limitless, and localities are prohibited by state law from requiring a special-use permit for any production of agriculture in an area zoned as an agricultural district.¹⁰² Further, a locality's zoning power is severely restricted by Virginia's adherence to the Dillon Rule, which provides that localities "have only those powers expressly granted, those necessarily or fairly implied there-from, and those that are essential and indispensable."¹⁰³ Any doubt about the existence of authority is construed against the locality.¹⁰⁴

The Virginia Supreme Court has made clear in two decisions that a locality may enact a valid zoning ordinance regulating the location

95. § 4.1-100 ("Farm winery").

96. § 4.1-201(A)(10); *see also* § 4.1-219 (1999); § 58.1-3505(C) (2004).

97. § 3.1-22.28.

98. *Id.*

99. *See* § 4.1-100 ("Farm winery" and "Wine"); *see also* § 4.1-230.

100. *See* § 15.2-2280(1)-(4).

101. § 15.2-2280(1); *see also* § 15.2-2283.

102. § 15.2-2288.

103. *Commonwealth v. County Bd. of Arlington County*, 232 S.E.2d 30, 40 (Va. 1977) (citing *City of Richmond v. County Bd.*, 101 S.E.2d 641, 644-45 (Va. 1958)).

104. *Id.* at 42.

of a commercial establishment selling alcoholic beverages.¹⁰⁵ In *City of Norfolk v. Tiny House*,¹⁰⁶ a restaurant wishing to serve alcohol challenged a city ordinance that defined several uses as "adult uses," including an establishment selling alcohol and required a use permit for adult uses within 1,000 feet of another adult use.¹⁰⁷ The Court, relying in part on *Young v. American Mini Theatres, Inc.*,¹⁰⁸ held that the ordinance was a valid exercise of the municipality's police power, was not arbitrary or unreasonable, and was not preempted by Virginia ABC law.¹⁰⁹ In a 2002 case, *County of Chesterfield v. Windy Hill, Ltd.*,¹¹⁰ the Court followed *Tiny House* and ruled that the locality could require a conditional use permit subject to the condition that no alcoholic beverages shall be permitted on the property of an outdoor recreational establishment in an agricultural district.¹¹¹

C. Wine Tasting Activities

Wine tasting can generally be defined as a gathering of people at a location, such as in a winery or vineyard or on winery grounds, where wine is offered for tasting, sampling, comparison, and/or purchase.¹¹² Wine tasting activities include a variety of different functions from a couple of wine tourists stopping for an unarranged visit to a farm winery and receiving small samples of wines served by an authorized winery employee to a preplanned dinner with music and dancing hosted by an organization, such as a rotary club, where dinner is served and various wines are available for tasting and consumption by the glass.¹¹³ Wine tasting activities can be spontaneous or preplanned, open to the public or by invitation only, and can involve a variety of food and entertainment.¹¹⁴

105. *County of Chesterfield v. Windy Hill, Ltd.*, 559 S.E.2d 627 (Va. 2002); *City of Norfolk v. Tiny House*, 281 S.E.2d 836 (Va. 1981).

106. 281 S.E.2d 836 (Va. 1981).

107. *Id.* at 837-38.

108. 427 U.S. 50 (1976).

109. *City of Norfolk*, 281 S.E.2d at 839.

110. 559 S.E.2d 627 (Va. 2002).

111. *Id.* at 628, 631.

112. See EMILE PEYNAUD, *THE TASTE OF WINE* 1-2 (Michael Schuster trans., John Wiley & Sons, Inc. 1996).

113. See RONALD S. JACKSON, *WINE TASTING: A PROFESSIONAL HANDBOOK* 197-203 (Academic Press 2002). See generally Arcady Vineyard, <http://www.arcadyvineyard.com>.

114. See JACKSON, *supra* note 113.

Wine tasting activities are necessary accessory uses to the farm winery. As accessory uses, wine tasting activities are subject to the limitation that they must remain incidental to the primary agricultural use of the winery. As long as the tasting activities do not exceed grape growing and wine making as the primary uses of the parcel, wine tasting activities are generally considered lawful accessory uses permitted by right as part of the winery use.¹¹⁵

Wine tasting activities are essential to many farm wineries to promote and market their wines and generate income to sustain the agricultural operations.¹¹⁶ When Virginia farm wineries were able to sell wine through self-distribution channels, such direct sales represented from 25 to 40% of a farm winery's total sales.¹¹⁷ Farm wineries relied on retail sales at the winery to make up for the remaining 60 to 75% of their sales.¹¹⁸ Smaller farm wineries in Virginia sell from 70 to 95% of their wine through tasting rooms, with the average farm winery visitor purchasing 2.5 bottles of wine.¹¹⁹ With the loss of self-distribution, small farm wineries are confronted with the possibility of bankruptcy unless they can find new ways to increase the daily traffic of wine tourists to their wineries.

Thus, it becomes apparent that the solution to perceived problems associated with wine tasting activities at wineries is not as simple as it may appear. A ban or severe restrictions on wine tasting activities, as some Virginia localities propose, may not achieve the desired results.¹²⁰ A winery has the absolute right to sell wines as agricultural products from the winery and conduct wine tastings for winery

115. See FAUQUIER COUNTY ZONING ORDINANCE, §§ 6-101, -102(27) (2006), available at http://www.fauquiercounty.gov/documents/departments/commdev/pdf/zoningordinance/ART_06.PDF; CLARKE COUNTY ZONING ORDINANCE, §§ 9-B-3, -173, -177 (2005), available at http://www.co.clarke.va.us/documents/ZoningOrd/zone_ord.pdf.

116. See Va. Wineries Ass'n, *Talking Points for Tasting Room Staff on Self-Distribution*, July 1, 2006, <http://www.virginiawines.org/display/TalkingPoints.pdf>.

117. See Edwards, *supra* note 29; David Hendrick, *Distribution Debates: Wineries, Wholesalers at Odds over Potential Changes*, DAILY PROGRESS, Jan. 30, 2006, available at http://www.dailyprogress.com/servlet/Satellite?pagename=CDP%2FMGArticle%2FCDP_BasicArticle&c=MGArticle&cid=1137833732033&path=!business.

118. See Edwards, *supra* note 29; Hendrick, *supra* note 117.

119. Interviews with Louizos Papadopoulos, owner of Mediterranean Cellars Winery, Fauquier County, Va., and Tareq Salahi, owner of Oasis Winery, Fauquier County, Va., and president of the Blue Ridge Wine Way, Va. (Aug. 11, 2006).

120. See discussion *infra* Part IV.D.

visitors pursuant to Virginia ABC law.¹²¹ If a farm winery is prohibited from marketing its wine through wine tasting activities, the winery will have no choice but to bring as many people as possible to the winery on a daily basis for by-right wine tastings and associated retail sales.¹²² An increase of day-to-day traffic would not please some neighbors living near the wineries who already complain about traffic from isolated farm winery events. Those same neighbors would likely not favor the prospect of living next to a new subdivision that replaces the winery when it is forced out of business. When all the consequences are considered, it may be that the complaining neighbors prefer wine tasting activities over the alternatives.

D. The Problem—Selected Local Ordinances on Wine Tasting

Virginia state law and regulations provide no legal definition of “wine tasting,” and it is unclear to what extent wine tasting activities, including weddings, receptions, and functions to promote the winery are subject to regulation by localities. State law limits the number of tasting events that can be held pursuant to a tasting license,¹²³ but it does not place any restrictions on the size or number of wine tasting activities that a winery may hold pursuant to its farm winery license, and there are no restrictions placed on the type of foods a winery may serve along with its wine.¹²⁴ Some Virginia farm wineries host wine tasting lunches and dinners where they provide samples and sell their wine by the glass to visitors along with a catered meal.¹²⁵ Ambiguities and voids in state law, as perceived by some localities, leave such wine tasting activities open to regulation by localities.¹²⁶ To further complicate the issue, it is not entirely clear how *Windy Hill* and *Tiny House*, which address the issue of regulation of commercial establishments with alcoholic beverage sales as an accessory use,¹²⁷

121. See VA. CODE ANN. §§ 4.1-201, -207(5) (2006); 3 VA. ADMIN. CODE § 5-70-100(A)(3)(a) (2006).

122. Compare § 4.1-206(5) (Tasting licenses), with § 4.1-207(5) (Farm winery licenses), and § 5-70-100(A)(3)(a) (Free samples).

123. § 4.1-221.1.

124. See §§ 4.1-221.1, -206(5), -207(5).

125. See generally THE 2006 VIRGINIA WINE GUIDE (Va. Wineries Ass'n, 2005), available at http://virginiawines.org/guide/06guide_sm.pdf.

126. See § 15.2-2288.3 (temporarily prohibiting local governments from requiring any more restrictive special exceptions and use permits).

127. See *County of Chesterfield v. Windy Hill, Ltd.*, 559 S.E.2d 627, 628, 631 (Va. 2002); *City of Norfolk v. Tiny House, Inc.*, 281 S.E.2d 836, 840 (Va. 1981).

apply to farm wineries, which are agricultural uses selling an agricultural product that is also an alcoholic beverage.

Under the auspice of their zoning power, some Virginia localities interpret their authority to include the ability to require special use permits, special exceptions, or conditional-use permits for farm wineries that hold wine tastings and similar events, some of which regulate specific aspects and details of the wine tasting activities.¹²⁸ Use permits are not unique to Virginia; certain other state courts in Washington, California, and Oregon have upheld conditions imposed on wineries by planning commissions through special use or conditional use permits.¹²⁹ In California, Oregon, and Washington, use permits can only go so far in restricting the ability of wineries to conduct wine tasting activities because laws in those states provide wineries certain protections with respect to wine tasting activities.¹³⁰ Such protections are uncertain under current Virginia state law.¹³¹ At least one court has held that a permit issued by the ABC Commission to sell alcoholic beverages preempts the denial of a special exception use,¹³² but there has been no similar decision to date in Virginia.

Despite the apparent preemption of the manufacturing, sale, handling, drinking, use, advertising, and dispensing of wine by state law, some Virginia localities regulate wine tastings, often in response to concerns voiced by winery neighbors. As the Virginia wine industry continues to grow, some localities in the state have responded by placing certain requirements and restrictions on farm wineries that do not apply to other agricultural uses.¹³³ Some require

128. See § 15.2-2288.3.

129. See, e.g., *Murr v. Walla Walla Co.*, No. 21949-6-III, 2004 Wash. App. LEXIS 1280 (Wash. Ct. App. 2004) (affirming the county's decision to grant conditional use permits to a winery with wine tasting rooms); *Anderson Valley Env'tl. Prot. Group v. Mendocino*, No. A095009, 2002 Cal. App. LEXIS 1971 (Cal. Ct. App. 2002) (upholding a zoning board's decision to grant a use permit for operating a wine tasting room); *Craven v. Jackson Co.*, 779 P.2d 1011 (Or. 1989) (finding wine tasting to be a valid commercial activity that satisfies the requirements for a use permit).

130. See *Murr*, 2004 Wash. App. LEXIS 1280, at *1-2, 10, 14-15, 25; *Anderson Valley Env'tl. Prot. Group*, 2002 Cal. App. LEXIS 1971, at *12, 15, 17-19; *Craven*, 779 P.2d at 1013-15.

131. See § 15.2-2288.3; see also Kane, *supra* note 20.

132. *In re Melkonian*, 355 S.E.2d 503, 507-08 (N.C. 1987).

133. Compare FAUQUIER COUNTY, VA., ZONING ORDINANCE § 3-318(17)-(18) (2006), and WARREN COUNTY, VA., ZONING ORDINANCE § 180-46.5 (2006), available at http://www.e-codes.generalcode.com/codebook_frameset.asp?ep+fs&t+ws&cb+1232_A, with FAUQUIER COUNTY ZONING ORDINANCE, § 3-318(20)-(21), and WARREN COUNTY ZONING ORDINANCE, § 180-56.1f.

special exceptions or special use permits limiting the activities that can be conducted on the winery premises.¹³⁴ For example, Warren County allows farm wineries in Agricultural Districts by conditional use permit and, among other things, prohibits restaurants on the winery premises but allows catering as “a de minimus use as part of the winery operation.”¹³⁵ Clarke County allows wine tasting, wine consumption, food preparation and consumption, and events and festivals that promote the winery as accessory uses but requires permits for events and festivals.¹³⁶

Fauquier County, which is home to nine farm wineries and once was home to the annual Virginia Wine Festival, provides a good example of how far local regulation of wineries has reached.¹³⁷ Fauquier County allows viticulture only in rural districts, such as Rural Agricultural, Rural Conservation, and Rural Residential, and then allows a “winery with special events, major” by special exception and a “winery with special events, minor” by special use permit.¹³⁸ The Fauquier Zoning Ordinance requires that all wineries front a major collector highway (or larger) unless it is determined that the amount of traffic generated will not cause an undue impact on neighbors or adversely affect the safety of the road usage, that any retail sales be accessory and incidental to the winery use, and that no structures be located closer than fifty feet from any lot line.¹³⁹ The Ordinance allows a winery larger than twenty-five acres to have up to fifteen minor events with less than 150 attendees per calendar year, and it allows a winery larger than forty acres to have two major events with less than 2,500 attendees per calendar year.¹⁴⁰ Wineries are also required to “provide adequate security, emergency services, traffic control, sanitation and refreshment services at every event” and provide a copy of all required permits to the Zoning Administrator.¹⁴¹

134. FAUQUIER COUNTY ZONING ORDINANCE, § 3-318(17)-(18).

135. WARREN COUNTY ZONING ORDINANCE, § 180-46.5. This section of the Code also regulates the accessory gift shops that can operate with the winery use, regulates noise associated with the winery operation, excluding bona fide agricultural activities, and regulates the percentage of grapes that must be grown at the farm.

136. CLARKE COUNTY ZONING ORDINANCE, § 9-B-177.

137. See Fauquier County Visitors Page, <http://www.fauquiercounty.gov/visitors/index.cfm?page=wineries> (last visited Nov. 12, 2006).

138. FAUQUIER COUNTY ZONING ORDINANCE, § 3-318(17)-(18).

139. *Id.* § 5-1810(1)-(2), (5).

140. *Id.* § 5-1810(3)-(4).

141. *Id.* § 5-1810(6).

Distribution of anything other than "complimentary, light fare" or sale of any food is prohibited at a farm winery according to the Fauquier County Zoning Administrator.¹⁴²

The special exception permits required by Fauquier County include restrictions and requirements for virtually every aspect of the business operations for an event held on the winery premises.¹⁴³ For example, the permits expressly state and describe the types of activities that may occur on the winery premises and require that the winery notify neighbors prior to an event.¹⁴⁴ The permits further delineate what portions of the premises can be used, and they limit the frequency that various-sized events may be held, the number of attendees that can attend events, and the hours of events.¹⁴⁵ The permits also prohibit all outdoor amplified music and otherwise restrict permitted sound levels for various events, and prohibit certain activities such as fireworks, aircraft rides, and other activities.¹⁴⁶ A new or amended permit is needed if the winery expands any of its facilities.¹⁴⁷ At one point, Fauquier County circulated a proposed amendment to its Zoning Ordinance that would have codified many of these requirements and, among other things, defined a private party held by the property owner as an event subject to the local regulations.¹⁴⁸

Even after the passage of House Bill 1435 by the Virginia General Assembly, at least one Virginia locality has attempted to impose severe restrictions on farm wineries. Upon learning of a new farm winery located within its jurisdiction, Prince William County issued a formal determination of its Zoning Ordinance and asserted to the owner of the winery that its Zoning Ordinance requires a special use permit if any customers were to be allowed on the property or if any wine would be sold at retail.¹⁴⁹ Prince William also maintained that

142. Letter from Kimberly Johnson, Zoning Administrator of Fauquier County Department of Community Development, to Bill McIntire, Stillhouse Vineyards (Nov. 12, 2004) (on file with the Thomas M. Cooley Law Review).

143. Letter from Robert C. Counts, Assistant Chief of Planning, Fauquier County Department of Community Development, to Philip C. Strother (Apr. 29, 2003) (on file with the Thomas M. Cooley Law Review).

144. *See* § 5-1810.

145. *Id.*

146. *See id.* § 5-007.

147. *Cf.* § 5-004.

148. FAUQUIER COUNTY, VA., ZONING ORDINANCE § 5-1810 (Proposed Draft).

149. Letter from Nick Evers, AICP, Zoning Administrator, County of Prince William, Virginia, to Chris Pearmund (Aug. 3, 2006) (on file with the Thomas M. Cooley Law Review).

existing structures and new buildings that would be used by the farm winery required zoning permits.¹⁵⁰ These assertions, on their face, are in clear violation of the provisions of the Virginia ABC Act that allow the holder of a farm winery license to sell its wine at retail and offer wine tastings to customers at the winery, and they also violate the Virginia Right to Farm Act that prohibits the use of special permits for agricultural production.

To make matters worse for the new winery owner, on October 12, 2006, Prince William proposed Special Use Permit conditions for the new winery that clearly violate House Bill 1435, now codified as Va. Code § 15.2-2288.3, in several fundamental ways.¹⁵¹ Section 15.2-2288.3(A) of the new law provides that “[l]ocalities may not require that a special exception or special use permit be obtained for the processing of wine by licensed farm wineries.”¹⁵² However, Prince William’s proposed conditions do precisely that by designating a single building as the only structure that can be used for wine making activity.¹⁵³ Also, the proposed conditions purport to ban amplified outdoor music in direct disregard for the General Assembly’s prohibition of such provisions in a special use permit.¹⁵⁴ Moreover, Section 15.2-2288.3(B) provides that “[n]o locality may adopt any requirements for special exceptions or special use permits relating to licensed farm wineries that would be more restrictive than its requirements in effect as of January 1, 2006.”¹⁵⁵ The proposed conditions, among other things, set the permissible operation schedule for the winery, designate transportation and parking configurations, and require payment of a \$100 contribution per special event to the county fire and rescue agency.¹⁵⁶ As of January 1, 2006, the Prince William Zoning Ordinance did not include as many restrictive requirements as these special conditions purport to impose.¹⁵⁷ At the time of the publication deadline, the winery owner was contemplating an appropriate legal action.

150. *Id.*

151. Proposed Conditions (Oct. 12, 2006) (on file with the Thomas M. Cooley Law Review).

152. VA. CODE ANN. § 15.2-2288.3(A) (2006).

153. Proposed Conditions, *supra* note 151.

154. *Id.* § 15.2-2288.3(C).

155. *Id.* § 15.2-2288.3(B).

156. Proposed Conditions (Oct. 12, 2006) (on file with the Thomas M. Cooley Law Review).

157. PRINCE WILLIAM CO., VA. ZONING ORDINANCE art. III, Part 300, § 32-300.07 (2005) (available at <http://www.pwcgov.org/docLibrary/PDF/004277.pdf>).

In light of the limited guidance provided by the Code of Virginia, the question for many Virginia farm wineries is whether they are able to conduct wine tasting lunches, dinners, and similar activities either pursuant to their ABC farm winery license in conformance with Virginia ABC law or as an accessory use to the farm winery agricultural use. This Article examines the alcoholic beverage law in other leading wine producing states to determine whether wine tasting lunches, dinners, and the like would be permitted by right to winery license holders. The Article finds that wine tasting activities are permitted in certain states while prohibited in others.¹⁵⁸ The Article concludes that if Virginia wishes to follow through on the principles of Vision 2015, it must now amend the Virginia Farm Winery Act using the leading west coast states' laws as a model so that Virginia may achieve the Vision 2015 goals and ensure the continued success of its wine industry and wine tourism.

V. A SURVEY OF OTHER TOP WINE PRODUCING STATES¹⁵⁹

The laws governing wine tasting lunches, dinners, and related wine activities vary widely among the states. In examining the various laws, it is instructive to note that the states that allow wine tasting activities have experienced recent growth in their wine industries, while those with more restrictive laws have seen their wine industries lose market share.¹⁶⁰ When searching for a model, the Virginia General Assembly would be well served by looking to west coast states, like California, which has long enjoyed a remarkably successful wine industry, and others, such as Washington and Oregon, which have experienced unparalleled growth in recent years.¹⁶¹

158. See discussion *infra* Parts V.A-F.

159. Caveat: The authors are licensed Virginia attorneys and are not licensed in any other state. With respect to the law in other states, a licensed attorney in that state should be consulted.

160. See Raymond J. Folwell & Mark A. Grassel, *How Tasting Rooms Can Help Sell Wine*, in ADVERTISING AND PROMOTION 11 (1995), available at <http://ag.arizona.edu/arec/pubs/dmkt/HowTastingRooms.pdf> (discussing how wine tasting rooms have helped Washington wine sales). See generally NAT'L AGRIC. STATISTICS SERV., CROP PRODUCTION (2005), available at <http://usda.mannlib.cornell.edu/usda/nass/CropProd//2000s/2005/CropProd-10-12-2005.pdf> (indicating decreased grape production for New York and Pennsylvania and increased production for Washington).

161. See Larry Walker, *Pacific Northwest Shows Astonishing Growth-Wine Industry*, WINES & VINES, July 1997, available at http://www.findarticles.com/p/articles/mi_m3488/is_n7_v78/ai_19805986.

A. *York and Pennsylvania—wineries cannot host wine tasting activities and their wine industry is losing share of the national market*

The New York and Pennsylvania legislatures have opted to limit the ability of their wineries to host wine tasting functions, and as a result, have seen their market share of wine production decrease.¹⁶² In the late 1980s, New York was in a firm position as the second largest producer of wine grapes in the country but has now been overtaken by Washington,¹⁶³ and if current trends continue, New York will not remain the third largest producer for very long. Pennsylvania was the fourth largest producer of wine grapes in the late eighties, but it has been surpassed by Oregon, Texas, and Virginia.¹⁶⁴

In New York, the Division of Alcoholic Beverage Control/State Liquor Authority ("New York ABC") issues a license for farm wineries defined as "any place or premises, located on a farm in New York state, in which wine is manufactured and sold."¹⁶⁵ A New York farm winery may sell "wine at retail for consumption on or off the premises . . . and . . . for consumption on the premises of a restaurant, conference center, inn, bed and breakfast or hotel business owned and operated by the licensee in or adjacent to the farm winery for which the licensee is licensed."¹⁶⁶ Wineries in the state are also permitted to conduct "wine tastings" on the winery premises and in certain licensed establishments in compliance with the New York ABC's

162. See generally NAT'L AGRIC. STATISTICS SERV., *supra* note 160 (indicating decreased grape production for New York and Pennsylvania in 2005).

163. See The N.Y. Wine & Grape Found., *The Wine Press Newsletter*, UNCORK NEW YORK, Nov. 27, 2004, <http://www.newyorkwines.org/informationstation/newstouse/newsletters/winepress.asp?ArticleID=716>.

164. See Dan Freedman, *The Wines of Texas Are Upon You*, HEARST NEWSPAPERS, May 5, 2005, available at <http://www.azcentral.com/home/wine/articles/0505texaswine05.html#> (indicating that Texas and Virginia follow behind California, Washington, New York, and Oregon in wine production).

165. N.Y. ALCO. BEV. CONT. LAW §§ 75, 3(12-a) (McKinney 2006); *cf. id.* § 3(37) (explaining that a "winery" means a place where wine is made from any fruit brandies distilled from any fruit or cordials compounded and also includes a winery located outside New York state if it maintains a branch, office, or storeroom in the state); *see id.* § 3(36) (explaining that "wine" is limited to less than 24% alcohol by volume). This discussion is limited to farm wineries.

166. *Id.* § 76-a(3).

rules and regulations.¹⁶⁷ The statute is silent regarding whether a farm winery may charge for on-premises wine tastings, but for wine tastings elsewhere, no fee may be charged in conjunction with the tasting, no wines may be sold for off-premises consumption, and the fee the farm winery may charge for the samples may not exceed twenty-five cents.¹⁶⁸ A New York farm winery licensee may apply for a permit to sell wine by the bottle at retail during tastings, or at an establishment licensed to sell liquor at retail for consumption on the premises.¹⁶⁹

At first glance, New York appears to have laws to promote its wine industry through wine tasting activities, but a farm winery in New York may only sell food items not prepared for immediate consumption.¹⁷⁰ This is not consistent with wine tasting lunches, dinners, receptions, or other social functions on the winery premises where full meals are provided. Such activities could be held by a farm winery on the premises of certain other licensed establishments, but that cuts into the farm winery's profit margins and does not promote the farm winery industry or attract wine tourists as effectively as allowing such events on the winery premises.

Pennsylvania does not have farm wineries, instead, the Pennsylvania Liquor Control Board's Bureau of Licensing ("Pennsylvania LCB") issues a permit for "limited wineries," which are wineries that may only produce up to two hundred thousand gallons per year of alcoholic ciders, wines, and wine coolers made from an agricultural commodity grown in the state.¹⁷¹ Limited winery

167. *Id.* §§ 80, 76, 63.

168. N.Y. COMP. CODES R. & REGS. tit. 9, § 63.11(6)-(7) (2006); N.Y. ALCO. BEV. CONT. LAW § 76(2)(a-1). Since a winery is permitted to charge for the samples, the regulations presumably mean that the farm winery may not charge an admission price or pay or charge the establishment for the wine tasting. However, a licensed farm winery may sell wine by the bottle for consumption off premises at wine tastings for up to five events per year sponsored by charitable organizations and may charge for the samples at such events. § 76(2)(c).

169. N.Y. ALCO. BEV. CONT. LAW §§ 76(2)(a-1), 64(1).

170. *Id.* § 76-a(4). "New York state labeled wine" means wine made from grapes, at least seventy-five percent the volume of which were grown in New York state." *Id.* § 3(20-a).

171. Compare 47 PA. CONS. STAT. § 5-505 (2006) (permitting licenses to be issued for the operation of a farm winery), and *id.* § 5-505.2(a)(1) (explaining the activities that a limited winery may conduct), with *id.* § 1-102 (defining limited winery). In 1986, Pennsylvania's liquor control law underwent major changes, including the creation of a Liquor Licensing Bureau within the Department of Revenue, which has the responsibility of issuing certain licenses. Exec. Order No. 1986-7, 16 Pa. B 4774 (1986), available at

licensees may sell wine produced at the winery, but the wine cannot be consumed on the licensed premises.¹⁷² Pennsylvania limited wineries may provide "samples of wine produced by the limited winery for tasting" to visitors on the premises at no charge, along with crackers, nuts, cheese, and the like.¹⁷³

As a result of the prohibition against consumption on the licensed premises and the limitations on what foods may be served with wine samples, a Pennsylvania limited winery would not be able to host wine tasting lunches, dinners, receptions, and similar activities on the winery premises.¹⁷⁴ However, a limited winery may apply to the Pennsylvania LCB for a special permit allowing the license holder to sell wine, sell or provide free samples at "alcoholic cider, wine and food expositions" off the licensed premises, and sell wine by the glass or bottle for up to five consecutive days, not to exceed forty days per calendar year, and participate in annual wine festivals conducted by the LCB.¹⁷⁵ While expositions do provide a limited forum for limited wineries to promote their wines, they do not promote the individual wineries to the extent that wine tasting activities on the winery premises would, and they do not attract year-round wine tourism.¹⁷⁶

<http://www.oa.state.pa.us/oac/cwp/view.asp?A=351&Q=128628>. See generally 4 PA. CODE § 7.341 (2006).

172. 47 PA. CONS. STAT. § 5-505; *id.* § 5-505.2(a)(1); *id.* § 1-102. "Wine" is limited to alcohol distillate from grapes or fruit with an alcohol content of 24% or less. *Id.* This Article only discusses limited wineries which are comparable to farm wineries and domestic wineries in other states.

173. 40 PA. CODE § 11.111(a)(1)-(6) (2006). In addition, limited wineries may offer for sale a number of items, such as Pennsylvania-grown fruits and products produced from them, mushrooms grown in the state, home wine-making equipment, wine-serving and storage accessories, books on wine, food, promotional items, and gift packages. *Id.* § 11.111(a)(8).

174. See *id.* § 11.111(a)(1); § 5-505.2.

175. § 5-505.2(a)(2)-(4).

"[A]lcoholic cider, wine and food expositions" are defined as affairs held indoors or outdoors with the primary intent of educating those in attendance of the availability, nature and quality of Pennsylvania-produced alcoholic ciders and wines in conjunction with suitable food displays, demonstrations and sales. Alcoholic cider, wine and food expositions may also include activities other than alcoholic cider, wine and food displays, including arts and crafts, musical activities, cultural exhibits, agricultural exhibits and similar activities.

Id. § 5-505.2(a)(4).

176. See *id.* § 5-505.2(a)(2)-(4).

While market trends and fluctuations in the wine industry certainly rely on a variety of factors, including the weather, it is a fair inference that legislation in New York and Pennsylvania that restricts the ability of wineries in those states to have profitable wine tasting activities on the winery premises does not help foster the states' wine industries. In these states, wineries cannot host wine tasting activities for a charge at the winery that generate income for the winery and lack a profitable way to attract wine tourists to the wineries in order to promote their wines.¹⁷⁷ As a result, the wine industry in these states has declined in recent years as states with more wine-friendly legislation have increased their market shares.¹⁷⁸

B. Texas, New Jersey, Missouri, North Carolina—wineries are permitted to have wine tasting activities and the wine industry is booming

Texas, New Jersey, Missouri, and North Carolina—states that have been experiencing recent growth in their wine industries—uniformly allow wine tasting activities on winery premises.¹⁷⁹ In 1987, estimates of grape production were not even taken for Texas, New Jersey, and North Carolina, and Missouri only produced an estimated 1,570 tons of grapes for wine.¹⁸⁰ These states have allowed wine tasting activities on the premises of their wineries, which serve to promote their wine industries,¹⁸¹ and now Texas has emerged on

177. See 40 PA. CODE § 11.111(a)(6).

178. See *supra* note 160 (noting the decrease in New York and Pennsylvania); *infra* note 179 (noting the increase in states where wine tasting is allowed).

179. Press Release, Texas Dep't of Agric., Activities Uncorked for Texas Wine Month Celebration, available at http://www.agr.state.tx.us/agr/main_render/0,1968,1848_1941_7989_0,00html?channelId=1941 (last visited Nov. 12, 2006); Garden State Wine Growers Ass'n, *Wine Making Is A New Jersey Tradition*, available at <http://www.newjerseywines.com/history.html>; see generally Missouri Wine and Grape Bd., *Missouri Wines: The Best of the Bunch*, Summer 2006 at 2-3, http://www.missouriwine.org/PDF/wineneews_062006.pdf, and *How to "Taste" Wine*, http://www.missouriwine.org/main_tasting.html (last visited Nov. 12, 2006); see also *Tastings at a Winery*, <http://www.ncwine.org/wineMaking/commercialWineryStartUp.html> (last visited Nov. 12, 2006), and *Fast Facts*, <http://www.ncwine.org/fastFacts.html> (last visited Nov. 12, 2006).

180. U.S. DEP'T OF AGRIC., FINAL ESTIMATES FOR 1987-92, *supra* note 41.

181. Texas Alcoholic Beverage Comm'n, *Marketing Practices Bulletin*, MPB 002 (2005), available at

the national wine market as the fifth largest producer of wine.¹⁸² And the wine industry in New Jersey, Missouri, and North Carolina has experienced considerable growth; these states are making their presence known in the national market.¹⁸³

The Texas Alcoholic Beverage Commission issues a "winery permit" that allows the holder to sell wine to consumers for consumption on and off the winery premises.¹⁸⁴ A Texas winery may dispense free wine for consumption on the winery premises and, subject to certain advertising restrictions, may conduct wine samplings and tastings for a fee on the winery premises and at a retailer's premises.¹⁸⁵

The New Jersey Director of the Division of Alcoholic Beverage Control supervises the manufacture, distribution, and sale of wine in New Jersey and issues a "farm winery" license.¹⁸⁶ A New Jersey farm winery may "sell at retail to consumers for consumption on or off the licensed premises and offer samples for sampling purposes

<http://www.tabc.state.tx.us/enforce/bulletins/MPB002A.pdf>; N.J. ADMIN. CODE § 13:2-37.1 (2006); 2005 N.C. Sess. Laws 350; MO. REV. STAT. § 311.294 (2006).

182. Texas Dept. of Agric., *supra* note 179.

183. HODGEN, *supra* note 42, at 5 (stating that there are twice as many acres devoted to wineries and vineyards in New Jersey than there were five years ago); *Review Federal Farm Policy: Hearing Before the Subcomm. on Livestock and Horticulture*, 109th Cong. 2 (2006) (comments by Cory Bomgaars, Head Winemaker and Partner, Les Bourgeois Vineyards and Winery), available at <http://agriculture.house.gov/hearings/109/h60828w7.pdf> (stating that Missouri has nearly doubled its wineries in the last decade); Laura Williams-Tracy, *New Wines From an Old Vineyard*, N.C. MAG., 2001, available at <http://www.nccbi.org/NCMagazine/2001/mag-08-01wine.htm> (stating that in the past decade, commercial vineyards in North Carolina rose from sixty-eight to 250).

184. TEX. ALCO. BEV. CODE ANN. § 16.01(a)(1)-(2) (Vernon 2006) (stating wine must be less than twenty-four percent alcohol by volume); *see id.* § 1.04(7) (definition of wine). A winery may even sell wines bottled in the state and made from at least seventy-five percent grapes grown in the state in "dry" areas pursuant to § 16.011.

185. *Id.* §§ 16.01(a)(7), (b), 16.07.

186. N.J. STAT. ANN. § 33:1-3 (West 2006). NJ ABC law separates licenses into classes, such as Class A for manufacturing and Class C for retail sales, but the "farm winery" license allows manufacturing, distribution, and retail sales. *Id.* §§ 33:1-9, 33:1-10. A farm winery license can only issue to a person actively engaged in growing and cultivating an area not less than three acres on or adjacent to the winery premises, and the wine manufactured must be produced from grapes grown in the state to the extent required for labeling as "New Jersey Wine" under federal law. *Id.* § 33:1-10(2b) (stating that for the first five years of the farm winery, the wine can be produced from 51% grapes grown in the state).

only.”¹⁸⁷ The farm winery license holder may also sell his wine in bottles at retail in up to six salesrooms apart from the winery, for consumption on or off the premises, and for sampling purposes for an additional fee.¹⁸⁸ A New Jersey farm winery must apply for an annual special permit to host consumer tasting events, which are scheduled events hosted by the licensee that are not open to the public and for which invitations are provided at least twenty-four hours in advance and involve wine from the licensee’s inventory.¹⁸⁹

The Missouri Division of Alcohol and Tobacco Control issues a license for “wine manufacturers” that allows the license holder to offer samples of wine, sell wine in its original package to consumers on the winery, and may open such wine so that it may be consumed on the winery premises during specific hours.¹⁹⁰ Further, “for the purpose of the promotion of tourism, a wine manufacturer, its employees, officers or agents . . . may apply for and the supervisor of liquor control may issue a license to sell” wine by the drink for consumption on the premises in close proximity to the winery during certain hours.¹⁹¹

The North Carolina Alcoholic Beverage Control Commission (“North Carolina ABC”) issues a number of permits relating to wineries, including an On-Premises Unfortified Wine Permit.¹⁹² Such a permit authorizes the retail sale of unfortified wine for consumption

187. *Id.* § 33:1-10(2b) (“‘Sampling’ means the selling at a nominal charge or the gratuitous offering of an open container not exceeding one and one-half ounces of wine.”). A “sampling” is defined as the act of a licensee offering a small amount of wine for the purpose of inducing a sale. N.J. ADMIN. CODE § 13:2-37.1(a)(2) (2006).

188. § 33:1-10(2b).

189. § 13:2-37.1(a)(1), (b)(5).

190. MO. ANN. STAT. § 311.190(2), (4) (West 2006) (stating that Missouri wine manufacturers may use wine making material produced outside of the state in an amount not to exceed fifteen percent of the total wine produced in the prior year and more in cases of natural disasters.); *see id.* § 311.050 (Requirement of license); MO. CODE REGS. ANN. tit. 11, § 45-12.090 (2006) (Rules of Liquor Control). Certain other license holders, such as a retail liquor dealer, must apply for a special permit to conduct wine tastings on the licensed premises, but are otherwise unable to sell wine for on-premise consumption. § 311.294(1)-(2).

191. § 311.070(9) (allowing any person to apply for such a license, but if not a wine manufacturer, they are limited to selling Missouri-produced wines.).

192. N.C. GEN. STAT. § 18B-1001(3) (2006). This discussion focuses on the On-Premise Unfortified Wine Permit, which is most similar to a Virginia farm winery license. *See id.* § 18B-1001(4) (Off-Premises Unfortified Wine Permit); § 18B-1001(5)-(6) (Fortified Wine Permits). Unfortified wine cannot exceed sixteen percent alcohol by volume. *Id.* § 18B-1001(15).

on the premises and the retail sale of the winery's wine in its original packaging for consumption off premises.¹⁹³ A winery may also apply for and be issued a Wine Tasting Permit authorizing wine tastings on a licensed retail premises subject to certain restrictions.¹⁹⁴ A winery may also apply to the North Carolina ABC for a special permit authorizing free tastings, sales by the glass, and in closed containers at "trade shows, conventions, shopping malls, wine festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission."¹⁹⁵

These states may require additional permits or other requirements for wine tasting activities, but they all have procedures in place to allow wine tasting activities on winery premises.¹⁹⁶ These states do not impose any limits on the size or frequency of wine tasting activities and sampling, nor do they limit the types of food that can be present at an event on the winery premises.¹⁹⁷ Wineries in these states are able to have wine tasting activities that promote their wines and generate funds to support the winery operations, and as a result, the wine industries in these states have grown significantly over the past two decades.¹⁹⁸

193. *Id.* § 18B-1001(3).

194. *Id.* § 18B-1001(15) ("A wine tasting consists of the offering of a sample of one or more unfortified wine products, in amounts of no more than one ounce for each sample, without charge, to customers of the business."). See *id.* § 18B-1103 (stating that a holder of an unfortified winery permit can also apply for a limited winery permit if it produces wine principally from grapes grown in the state, and then may give free samples to visitors of the winery).

195. *Id.* § 18B-1114.1. North Carolina previously had enacted laws that permitted "wine tasting parties," but these have been repealed. 4 N.C. ADMIN. CODE 2J.0301 (2006) ("Places where wine tasting parties may be held [repealed]").

196. See Texas Alcoholic Beverage Comm'n, *supra* note 181; Texas Dept. of Agric., *supra* note 179; N.J. ADMIN. CODE § 13:2-37.1 (2006); 2005 N.C. Sess. Laws 350; MO. ANN. STAT. § 311.294 (West 2006).

197. However, in New Jersey, wine tasting events and samplings may be held at plenary distribution licensed premises subject to various conditions, including: no eating; except cheese, crackers, chips, dips, and similar food at tasting events; and only cheese and crackers at tasting events. N.J. ADMIN. CODE § 13:2-37.1(c)(3-4); see also N.J. STAT. ANN. § 33:1-10(2a) (West 2006).

198. See *supra* notes 182-83 and accompanying text.

C. Ohio—Wineries are free from local regulation and the wine industry appears to be off to a strong start

Ohio has shown early signs of growth in its wine industry in recent years.¹⁹⁹ This success can be at least partially attributed to its laws that allow wineries wide latitude to market their products while prohibiting localities from interfering with the winery operations.²⁰⁰ Further, Ohio's growth is remarkable for a state that lacks both the ideal climate and romantic image of states like California and Virginia, which are conducive to the growth of the wine industry.²⁰¹

The Ohio Division of Liquor Control issues an A-2 permit to "a manufacturer to manufacture wine from grapes or other fruits"²⁰² The A-2 permit also allows a wine manufacturer to sell its manufactured wine "in glass or container for consumption on the premises where manufactured, [and] for home use"²⁰³ In Ohio, an A-2 permit holder may conduct a tasting of wine that is qualified for sale in the state and for which the permit holder is authorized to sell.²⁰⁴ Wine tastings are "for marketing purposes only," and after notice to the Division of Liquor Control, they may be conducted either at the manufacturer's place of business or any other designated place that is closed to the public; the wine must be provided without charge, and no fees shall be charged or donations accepted to attend or participate in a tasting.²⁰⁵ Despite the limitations on wine tastings,

199. Donna Marchetti, *Backyard Treasures: Ohio Wine Country*, BALANCED LIVING MAG., Nov.-Dec. 2004, available at <http://www.balancedlivingmag.com/2004/Nov%20-%20Dec%2004/Ohio%20Wine%20Country.htm>.

200. See OHIO REV. CODE ANN. § 4301.03(J) (LexisNexis 2003).

201. See Ohio Grape Industry, *Cool Climate Viticulture Wines*, <http://www.ohgrapes.org/viticulture.php> (last visited Nov. 12, 2006) ("Ohio and many regions of Europe and the west coast of the United States have what is known as cool climate viticulture that means shorter growing seasons, colder winters and unpredictable springs and autumns.").

202. § 4303.03; see *id.* § 4301.01(3) (stating that wine is limited to 21% alcohol by volume); § 4303.01. Winery is not defined under Ohio law. See *id.* § 4301.021 (providing the powers and duties of the superintendent); § 4301.13 (giving the rules and regulations for sales of bottles of wine).

203. *Id.* § 4303.03.

204. OHIO ADMIN. CODE § 4301:1-1-30 (2006) (tasting means "the distribution of small amounts of brands of . . . wine . . . in servings of not more than two ounces . . . to determine by tasting only the quality and character of the product, and not for general consumption purposes."); see also OHIO REV. CODE ANN. § 4301.17 (explaining the tasting permits for state liquor agency stores).

205. OHIO ADMIN. CODE § 4301:1-1-30(B).

in 2002, the Ohio Attorney General found that "banquet[s], reception[s], part[ies] at which entertainment is provided, theatrical show[s], music festival[s], clambake[s], pig roast[s], and other entertainment and special event[s]" may be held on winery premises when the events are for "the marketing of agricultural products," which is included in the definition of "agriculture"²⁰⁶ under the Ohio Revised Code and if the event "is of lesser importance or value than, the production of grapes or wine."²⁰⁷

Further, the Ohio legislature has enacted a right-to-farm law, which provides that governing bodies of townships have no power

to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, *including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture*, and no zoning certificate shall be required for any such building or structure.²⁰⁸

The Virginia Right to Farm Act provides similar protection for production agriculture, but it does not go as far as the Ohio law by specifically protecting buildings used for vending and marketing wine.²⁰⁹ Further, under Ohio law, "agriculture" includes marketing of agricultural products, which significantly expands the protection of this law for Ohio wineries.²¹⁰

Wineries in Ohio have enjoyed considerable success in recent years, free from interference by localities. In the state, wine tasting lunches, dinners, receptions, and similar activities for the purpose of marketing wine and winery structures are not subject to regulation by Ohio localities.²¹¹ Adoption of Ohio's regulatory scheme would no doubt increase the ability of Virginia wineries to successfully market their products through wine tasting activities, but a reasonable balance should be struck to incorporate genuine concerns of residents living near farm wineries. Virginia Code Section 4.1-222(2)(d) promotes this balance when the Virginia farm winery license is issued,²¹² but because certain localities continue to increasingly regulate every

206. OHIO REV. CODE ANN. § 519.01 n.5.

207. *Id.*

208. *Id.* § 519.21(A) (emphasis added).

209. *See* VA. CODE ANN. §§ 3.1-22.28, -22.29 (Supp. 2006).

210. *See* OHIO REV. CODE ANN. § 519.01 n.5.

211. *See* OHIO ADMIN. CODE § 4301:1-1-30(B).

212. VA. CODE ANN. § 4.1-222(2)(d).

aspect of Virginia wineries, the General Assembly should act to clarify the extent to which localities may regulate wineries through zoning ordinances, if at all, in light of Virginia ABC's comprehensive regulatory authority in the area of alcoholic beverages.

D. California—follow the leader?

California has enacted extensive legislation relating to wine, and it is apparent that the state's legislature has made the policy decision to promote its wine industry by allowing its wineries to hold wine tasting events on their premises.²¹³ California does not issue a license for wineries that are required to make wine primarily from grapes grown in the state,²¹⁴ so many of California's laws may not be the best model for a state like Virginia that has built its wine industry around farm wineries. However, the level and longevity of California's wine industry demands an examination of its laws regarding wine tasting activities.

The California Department of Alcoholic Beverage Control ("California ABC") issues a license to "winegrowers."²¹⁵ A winegrower's license gives the licensee wide authority to manufacture and distribute its wine.²¹⁶ A licensee may sell wine to consumers for consumption in a bona fide eating place located on the licensed premise or other contiguous premises owned and operated by the

213. CAL. BUS. & PROF. CODE § 23356.1 (West Supp. 2006).

214. See State of Iowa Alcoholic Beverages Div., *Native Winery Provisions*, http://www.iowaabd.com/alcohol/misc/native_winery_provisions.pdf (last visited Nov. 12, 2006).

215. Winegrower is defined as:

[A]ny person who has facilities and equipment for the conversion of grapes, berries or other fruit into wine and is engaged in the production of wine, except that any person who produces not to exceed 200 gallons of wine per year for his own consumption shall not, because of such production, be considered a winegrower within the meaning of this division.

CAL. BUS. & PROF. CODE § 23013. See *id.* § 23007 (giving the definition of "wine" and limiting wine to twenty-four percent alcohol by volume). A California winegrower is not limited to using grapes grown in the state. See *Native Winery Provisions*, *supra* note 214.

216. CAL. BUS. & PROF. CODE § 23356. See *Pronto Mkt. No. 1, Inc. v. Alcoholic Beverage Control Appeals Bd.*, 61 Cal. App. 3d 545 (1976) (discussing the less restrictive treatment of winegrowers under the California ABC Act, but concluding that a winegrower who holds an off-sale license cannot obtain an importer's license under the tied-house restrictions in the California ABC laws).

licensee.²¹⁷ A licensed winegrower may also have all beers, wines, and brandies, regardless of the source, for sale on the premises to guests at private events and functions that are not open to the public.²¹⁸

A California winegrower may also conduct wine tastings of wine that he or she produces on or off of the licensed premises.²¹⁹ Winegrowers are subject to the California ABC regulations, but generally, wine tastings may be conducted with or without charge to the public on the premises licensed with a winegrower's license, but not in retail areas; only wine produced or bottled by, or for, a winegrower may be offered for tasting, and only limited foods may be served to cleanse the palates of the participants.²²⁰ Further, a winegrower may conduct wine tastings of such wine at unlicensed premises where the wine tasting is by invitation only, not open to the public, and there is no charge for the wine served or for admission.²²¹ The California Codes do not impose a limit on the size of wine tastings, nor do they limit the number that can be held by a winegrower.²²²

In California, "winetasting" is not defined to include wine tasting lunches or dinners, as state regulations limit the nature of food that can be served,²²³ but a winegrower license would permit a winegrower to have wine tasting activities under several circumstances. First, a licensed winegrower could sell wine for consumption during a lunch or dinner in a bona fide eating place on the winery premises. Second, a winegrower could conduct a wine

217. § 23358. A "bona fide public eating place" is defined as "a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith . . ." *Id.* § 23038.

218. *Id.* § 23358.

219. *Id.* § 23356.1(a). "A winetasting is a presentation of samples of one or more wines, representing one or more wineries or industry labels, to a group of consumers for the purpose of acquainting the tasters with the characteristics of the wine or wines tasted." CAL. CODE REGS. tit. 4, § 53 (2006). Certain conditions apply to off-premise events sponsored by private nonprofit organizations. § 23356.3. The statute authorizes certain winegrowers to continue wine tastings of other domestic wines as a grandfathered practice. § 23356.1(b)-(c). *Cf.* § 23356.9 (stating that a wine blender license does not authorize wine tastings).

220. § 23356.1(a); tit. 4, § 53(a)(1). The regulations grandfather in winetastings for other licensees and specify different rules for winetastings by private organizations and other groups. §§ 23356.1(b)-(c); tit. 4, § 53(b).

221. Tit. 4, § 53(a)(2).

222. *See generally id.* § 53(a)-(g).

223. *See id.*

tasting lunch, dinner, or reception as a private event or private function, not open to the public, on the winery premises. Wine tastings are limited in their scope in California, but the State expressly permits private parties and other wine tasting activities that allow winegrowers to market their wines and raise funds to support their operations.²²⁴ This is no doubt one reason that California continues to have a successful wine industry while New York and Pennsylvania, formerly two of the largest producers, have seen their wine industries decline.²²⁵

E. Washington—wineries can have wine tasting events and the state's wine industry has experienced tremendous growth

Over the past two decades, Washington has experienced the largest growth of any state with its production level of grapes for wine nearly tripling,²²⁶ and therefore, it is a good model for Virginia, which hopes to double its market share by 2015. Washington issues a license similar to the Virginia winery license and grants the licensees the ability to host wine tasting activities on the winery premises.²²⁷ Washington's wine industry has thrived under such laws.²²⁸

The Washington State Liquor Control Board ("Washington LCB") issues licenses for "domestic wineries," which are comparable to Virginia farm wineries.²²⁹ Like a California winegrower, Washington domestic wineries are not limited to manufacturing wine from grapes grown in the state.²³⁰ However, all Washington grape farmers who

224. § 23358.

225. U.S. DEP'T OF AGRIC., 2005 PRELIMINARY SUMMARY, *supra* note 41; *see also* discussion *supra* Part II.

226. *See* discussion *supra* Part II; *see also* USDA U.S. Dep't of Agric., AGRICULTURE OUTLOOK (Nov. 25, 2002), *available at* <http://news.tradingcharts.com/futures/8/9usda1038233398.html>.

227. *See* WASH. REV. CODE ANN. § 66.28.010 (West 2006).

228. *See* discussion *supra* Part II; *see also* WASH. STATE LIQUOR CONTROL BD., WINE PROGRAM STRATEGY 2004-2009, (2004), *available at* <http://www.liq.wa.gov/publications/LCBWineProgramStrategyReport-Final.pdf>.

229. *See* WASH. STATE LIQUOR CONTROL BD., <http://www.liq.wa.gov/default.asp>. Compare § 66.24.520 (Grower's license), with VA. CODE ANN. § 3.1-1064.1 (2006) ("winegrower").

230. *See* discussion *supra* Part V.D., and § 66.24.170; *see* § 66.04.010(14) ("Domestic winery" means a place where wines are manufactured or produced within the state of Washington."); *see also* § 66.44.010(39) (giving the definition of "wine" and limiting wine to twenty-four percent alcohol by volume).

wish to sell their own wine must make their wine at a licensed domestic winery.²³¹

In Washington, as in Virginia and most states, a domestic winery may only manufacture and distribute wine as provided by law.²³² Generally, a domestic winery is prohibited from giving any person wine, but Washington law is clear that "nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises."²³³ This allows for tastings for sampling purposes at the wineries. Further, a domestic winery is permitted to act as a distributor and retailer of its own wine, in compliance with state law.²³⁴ A domestic winery may sell and serve its own wine on the winery premises in conformance with wine retailer regulations, and it may sell wine not of its own production at retail if it obtains the proper retail license.²³⁵ Domestic winery visitors in Washington are also allowed to consume wine of a winery's own production in parks and picnic areas adjacent to and owned by the winery.²³⁶ Further, a domestic winery may serve samples of its own product at other approved locations, with or without charge, and sell its wine at qualified farmers' markets if the Washington LCB grants the winery an endorsement.²³⁷ A domestic winery may also operate a licensed spirit, beer, and wine restaurant pursuant to applicable statutes and regulations.²³⁸

Washington law authorizes domestic wineries to be retailers of their own wine, and does not define wine tasting, specify a limit on what foods may be served at wine tastings, or limit the size or number of events that can be held.²³⁹ It follows that a domestic winery could

231. Compare § 66.24.520 (grower's license), with § 3.1-1064.1 ("winegrower").

232. § 66.24.230. Washington, like some other states, establishes strict standards for identifying various types of wines; promulgates regulations governing the alcoholic content of Washington wines; sets strict quality standards on the acid content, balling, preservatives, and stability; and prohibits "substandard wines." WASH. ADMIN. CODE §§ 314-24-003, -050, -060, -006 (2005).

233. WASH. REV. CODE ANN. § 66.28.040; see WASH. ADMIN. CODE § 314-64-080; see also WASH. REV. CODE ANN. § 66.24.150.

234. WASH. REV. CODE ANN. § 66.24.170(3). A wine distributor may sell wine to the board, export wine from the State, and purchase wine from or sell wine to another wine distributor. WASH. ADMIN. CODE § 314-24-180.

235. WASH. ADMIN. CODE § 314-24-160; see also WASH. REV. CODE ANN. § 66.24.230.

236. WASH. ADMIN. CODE § 314-24-160(3).

237. WASH. REV. CODE ANN. § 66.24.170.

238. WASH. ADMIN. CODE § 314-24-160(4).

239. See WASH. REV. CODE ANN. § 66.44.010(39)-(41).

host wine tasting activities on the winery premises, pursuant to the proper retail license, in adjacent parks and picnic areas owned by the domestic winery and in licensed restaurants operated by the farm winery.²⁴⁰

Washington domestic wineries have a variety of options when it comes to where and how they can host wine tasting activities, which has helped the state's wine industry grow and establish a national and international presence. The state now boasts over 400 wineries, up from just nineteen in 1981, and nine federally recognized American Viticultural Areas.²⁴¹ Wine tasting activities have generated a rapidly growing \$2.4 billion viticulture and tourism industry that employs over 11,000 people.²⁴² There is no reason to doubt that wine tasting activities could provide the same spark for Virginia wineries and help the state achieve its Vision 2015 goals.

F. Oregon—striking a reasonable balance between allowing wine tasting activities to promote the industry and preserving the rural and agricultural environment

The Oregon legislature has enacted laws that protect the ability of wineries to host wine tasting activities to promote Oregon wine, while at the same time, through other provisions, ensuring that the use of the winery does not negatively impact sensitive agricultural and rural surroundings and gives due regard to adjacent property owners.²⁴³ Under Oregon law, wine tasting activities are permitted on and off the winery premises all over the state,²⁴⁴ but in particularly sensitive areas, such as the Columbia River Gorge,²⁴⁵ wine tasting activities are subject to more restrictive state regulations.²⁴⁶ This achieves a balance between encouraging the wine industry while still protecting vulnerable rural areas.

240. *See id.*; *see also* WASH. ADMIN. CODE § 314-24-160(3).

241. Wines Northwest, available at <http://www.winesnw.com/wahome.html> (last visited Nov. 12, 2006).

242. *Id.*

243. OR. REV. STAT. § 471.223(2) (2003); *see id.* § 197.010.

244. *Id.* OR. REV. STAT. § 471.223(1).

245. The Columbia River Gorge is a Federal National Scenic Area, the first such area ever recognized by Congress. Columbia River Gorge National Scenic Area Act of 1986, Pub. L. No. 99-663, 100 Stat. 4274 (codified as amended at 16 U.S.C. § 544). It encompasses land in six counties in Oregon and Washington, and it includes federal and private land. *Id.*

246. *See id.*

The Oregon Liquor Control Commission ("Oregon LCC") issues a winery license that is comparable to the Virginia farm winery license.²⁴⁷ Like in California and Washington, an Oregon farm winery must principally produce its wine in the state, but a winery is not limited to producing wines from grapes grown in the state.²⁴⁸ The Oregon winery license grants the licensee wide authority to "import, bottle, produce, blend, store, transport or export wines," sell wines at wholesale and retail, and host events that promote and support the winery.²⁴⁹

An Oregon winery may have wine tastings on and off the winery premises.²⁵⁰ The winery license authorizes the holder to sell wine directly to consumers for consumption on or off the licensed premises; the licensee may also apply for a full on-premise sales license.²⁵¹ If the winery holds a sales license, it may provide or pay for sample tastings of wine on its premises.²⁵² Although subject to other restrictions, wine manufacturers may also conduct a limited number of tastings per year on retail premises.²⁵³ Further, a winery licensee can apply to the Oregon LCC for a special events winery license, entitling the winery to sell wine at retail for consumption on or off its premises, at locations other than the winery's licensed premises, for up to five days, subject to certain regulations.²⁵⁴

Wine tastings are subject to limited restrictions by the Oregon LCC. For example, tastings must be held by the winery in identified specific tasting areas to ensure proper supervision by winery employees.²⁵⁵ The winery must provide the wine, remove any unused portions, and provide an agent or employee to serve the samples.²⁵⁶ It

247. Compare OR. REV. STAT. § 471.223, with VA. CODE ANN. § 4.1-207 (2006).

248. OR. REV. STAT. § 471.223(2); see OR. ADMIN. R. 845-010-0905 (2006) ("Wine" means grape wine.).

249. OR. REV. STAT. § 471.223(1). Oregon also grants a "grower sales privilege license," which provides the holder with nearly all the privileges of a winery license, but the holder may not produce wine and may not apply for sales licenses. *Id.* § 471.227.

250. *Id.* § 471.223(1)(c).

251. *Id.* § 471.223(1), (5)(a).

252. *Id.* § 471.402. Brewery, grower sales privilege, brewery-public house, and warehouse licensees and manufacturer certificate holders also have this ability. See OR. ADMIN. R. 845-006-0450 (stating the wine sampling operating requirements and limits).

253. OR. ADMIN. R. 845-006-0450(3).

254. OR. ADMIN. R. 845-005-0415; OR. REV. STAT. § 471.223(1)(g).

255. OR. ADMIN. R. 845-006-0450(2).

256. OR. ADMIN. R. 845-006-0450(7).

is also prohibited from advertising the tasting outside the premises.²⁵⁷ Oregon law places no limits on the permissible size or frequency of wine tastings and does not specify which foods may be present.²⁵⁸

Oregon has enacted state-wide, comprehensive planning legislation, which recognizes the importance of wineries, even in environmentally sensitive areas, and the need for wineries to have the ability to host wine tasting events subject to reasonable restrictions.²⁵⁹ In 1973, the Oregon legislature passed the Land Use Planning Act, which requires local comprehensive plans, ordinances, and regulations to conform to state-wide planning goals.²⁶⁰ As in Virginia, localities can make their own land use decisions, implemented through zoning ordinances, with respect to the location of wineries, but, in general, wine tasting facilities are considered part of the agricultural use.²⁶¹

In 1987, Oregon and Washington entered into the Columbia River Gorge Compact, resulting in the Columbia River Gorge Commission, which comprises state and county representatives from both states who work to develop policies and programs to protect and enhance the Columbia River Gorge National Scenic Area.²⁶² In furtherance of those goals and at the direction of Congress, Oregon and Washington have adopted land use ordinances to protect and promote the scenic, cultural, recreational, and natural resources of the Columbia River Gorge, while still supporting the local economy and responsible future economic development.²⁶³ Even in this most sensitive and valuable resource, the Oregon Land Use Ordinance, approved by the Commission and the U.S. Secretary of Agriculture, allows wineries in

257. *Id.*

258. *See* OR. REV. STAT. § 471.223.

259. *See id.* § 197.010.

260. *Id.* § 197.010 (requiring comprehensive plans); *see id.* § 197.005.

261. *Craven v. Jackson County*, 779 P.2d 1011 (Or. 1989) (upholding the Board's determination that wine tasting and retail sales of souvenirs were in conjunction with farm use under the zoning ordinance and were consistent with statewide planning goals); *Cook v. Yamhill County Bd. of County Comm'rs*, No. 85-003, 1985 WL 544534 (Or. Land Use Bd. of Appeals Apr. 3, 1985) (upholding the County's interpretation of "winery" to include tasting facilities but holding that an exception to statewide Goal 3 for agricultural lands was required for approval of the winery with tasting facilities.).

262. Columbia River Gorge National Scenic Area Act of 1986, Pub. L. No. 99-663, 100 Stat. 4274 (codified as amended at 16 U.S.C. § 544); OR. REV. STAT. § 197.150; WASH. REV. CODE ANN. § 43.97.015 (2005). *See also* Columbia River Gorge Commission website, <http://www.gorgecommission.org/>.

263. OR. ADMIN. R. 350-080-0010 (2006); WASH. ADMIN. CODE 222-20-040 (2006).

appropriately zoned districts where the "processing and sales of wine is from grapes grown on the subject farm" and other farms in the region subject to "appropriate scenic, cultural, natural, and recreation resource guidelines" and approval by the Commission.²⁶⁴ Subject to the guidelines and additional review criteria, "wine sales/tasting rooms" are permitted in conjunction with an on-site winery in agricultural, forest land, woodland, and residential designated areas within the Gorge National Scenic Area.²⁶⁵ Further, "wine sales/tasting rooms," which may include interior and exterior spaces, may be reviewed and approved for preparing and serving meals, and for hosting weddings, receptions, and other events.²⁶⁶ After approval and subject to the guidelines, additional events, including "weddings, receptions, parties, and other small-scale gatherings" may be permitted on wineries within the Gorge National Scenic Area if those events are "incidental and subordinate to the primary use on a parcel."²⁶⁷ In this way, Oregon's Columbia River Gorge land use ordinance provides a good example of accommodating wineries and the need for wine tasting activities in a particularly sensitive area.

Through its liquor control law and its Columbia River Gorge land use ordinance, Oregon has created varying levels of criteria and requirements for wine tasting activities at wineries.²⁶⁸ In all areas except the Gorge National Scenic Area, which represents most of the state, wineries are permitted to have wine tasting activities, weddings, receptions, and similar events by right, pursuant to their Oregon LCC sales or retail licenses, as long as these events are incidental and subordinate to the agricultural use of the winery.²⁶⁹ Within the most naturally, culturally, and scenically sensitive Gorge National Scenic Area, wine tasting activities are limited in size, must conform to guidelines that mitigate their environmental impacts, and are subject to additional regulations to minimize the impact on surrounding

264. OR. ADMIN. R. 350-080-0200(1)(d) (agriculture); 350-080-0280(4) (commercial forest land and large or small woodland); 350-081-0200(4) (agriculture); 350-081-0380(10) (residential).

265. *Id.* 350-081-0200(5) (agriculture); 350-081-0280(5) (forest land or woodland); 350-081-380(11) (residential). A "wine sales/tasting room" is defined as "[a] facility that is accessory to a winery and used for tasting and retail sales of wine, including interior space (e.g., wine bar, sitting room) and exterior space (e.g., patio, veranda)." *Id.* 350-081-0020(176).

266. *Id.* 350-081-0020(176).

267. *Id.* 350-081-0108.

268. *Id.*; OR. REV. STAT. §§ 471.223, 471.402 (2006).

269. 350-081-0108; §§ 471.223, 471.402.

neighbors and the environment.²⁷⁰ In this manner, Oregon allows wineries to host wine tasting activities anywhere in the state, even in the Gorge National Scenic Area ("except on lands designated Open Space or Commercial Forest"), but imposes reasonable restrictions on wine tasting activities and events where appropriate in particularly sensitive areas.²⁷¹ Oregon's progressive laws have fostered the success of the state's wine industry.

VI. CONCLUSION

The first wine in America was made in Virginia in 1608,²⁷² yet the state's industry has only begun to grow in recent years. Farm wineries, particularly those with small production levels, face the near impossible task of promoting their wines against the much larger markets of France, Italy, Spain, California, and Australia. The vast majority of Virginia farm wineries rely heavily on wine tasting activities and events, such as weddings and wine tasting receptions, to promote their wines and to provide financial support for the winery and vineyard operations.²⁷³ This reliance has grown even stronger with the recent problems wineries have experienced with self-distribution and regulation by certain Virginia localities, which have threatened the ability of wineries to have such events.²⁷⁴

In the 1970s and 1980s, the General Assembly passed legislation to serve as a catalyst for the state's wine industry, but farm wineries in the state have been largely ignored by the legislature since then.²⁷⁵ In 2004, Virginia made a further commitment to its wine industry with Vision 2015,²⁷⁶ but farm wineries have encountered self-distribution and other problems that severely limit their ability to market their wines and ultimately get their wines to consumers.²⁷⁷ Now is the time to further expand the Virginia farm winery legislation and enact laws that clarify the ability of farm wineries to have wine tasting activities by right that promote Virginia wine. The leading west coast states

270. 350-081-0108.

271. *Id.*

272. Va. Wineries Ass'n, *A History of Virginia Wine*, *supra* note 8.

273. Madonna, *supra* note 16.

274. Press Release, Va. Wineries Ass'n, *Virginia Farm Wineries Threatened by Loss of Self-Distribution Rights* (Jan. 27, 2006), available at <http://www.virginiawines.org/news/2006/threatenedbyloss.html>.

275. *See supra* text accompanying notes 69-70.

276. VISION 2015, *supra* note 12; Press Release, *supra* note 274.

277. *See supra* Part V.D-F.

provide the most reasonable approach to allowing wine tasting activities at wineries by right under their ABC licenses, and these approaches would serve as a good model for Virginia.

After completion of the recently commissioned study of farm wineries, the General Assembly should enact new comprehensive legislation, which would protect the ability of farm wineries to host events that promote the winery and Virginia wines by right, subject to appropriate guidelines and criteria where needed to protect particularly sensitive natural resources or agricultural surroundings. In this way, the General Assembly could take one more step along the long path towards Mr. Jefferson's dream of Virginia as a major producer of world class wines.