

1 **SENATE FLOOR VERSION**

2 April 10, 2023

3 **AS AMENDED**

4 ENGROSSED HOUSE
5 BILL NO. 2640

6 By: Echols of the House

7 and

8 Coleman of the Senate

9 **[alcoholic beverages - permit - reports - penalties**
10 **- shipments - records - effective date]**

11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. AMENDATORY 37A O.S. 2021, Section 3-106, is
13 amended to read as follows:

14 Section 3-106. A. A Direct Wine Shipper's Permit may be issued
15 by the Oklahoma ABLE Commission to a winery licensed in this or any
16 other state within the United States as a wine producer. A Direct
17 Wine Shipper's Permit allows a winery to ship up to six nine-liter
18 cases of wine annually directly to an Oklahoma resident who is
19 twenty-one (21) years of age or older for such resident's personal
20 use and not for resale. No resident shall be permitted to purchase
21 more than thirty nine-liter cases of wine per year under the
22 provisions of this section.

1 B. The ABLE Commission shall promulgate rules governing the
2 application, issuance and renewal of Direct Wine Shipper's Permits,
3 which shall include but not be limited to:

4 1. Proof of current licensure in this or any other state as a
5 wine producer;

6 2. Payment of a registration fee of Three Hundred Dollars
7 (\$300.00) for original permits and One Hundred Fifty Dollars
8 (\$150.00) for renewal permits; and

9 3. Any other documentation that the ABLE Commission believes is
10 reasonably necessary to verify the identity and physical location of
11 the winery.

12 C. With regard to direct wine shipments permitted by this
13 section, Direct Wine Shipper permit holders:

14 1. Shall not ship more than six nine-liter cases of wine
15 annually to any person for his or her personal use;

16 2. Shall not ship wine intended for resale;

17 3. Shall ensure that all packages containing wine shipped
18 directly to a resident in this state are conspicuously labeled with
19 the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER
20 REQUIRED FOR DELIVERY" or are conspicuously labeled with alternative
21 wording preapproved by the ABLE Commission;

22 4. Shall require the transporter or common carrier that
23 delivers the wine to obtain the signature of a person twenty-one
24 (21) years of age or older at the delivery address at the time of

1 delivery. At the expense of the Direct Wine Shipper, the Direct
2 Wine Shipper shall receive a delivery confirmation from the express
3 company, common carrier or contract carrier indicating the location
4 of delivery and the name and signature of the individual who
5 accepted the delivery. The ABLE Commission shall design and create
6 a label or approve a label that must be affixed to the shipping
7 container by the licensee;

8 5. Shall report to the ABLE Commission ~~annually,~~ quarterly by a
9 method prescribed by the ABLE Commission, ~~the total amount of wine~~
10 ~~shipped into the state the preceding calendar year~~ all of the
11 following information for each wine shipment into the state pursuant
12 to this section:

- 13 a. the name and address of the Oklahoma resident who
14 placed the order,
- 15 b. for each completed shipment, evidence of signature by
16 an individual of age 21 or older,
- 17 c. the name and license number of the common or permit
18 carrier engaged in the shipment,
- 19 d. for each shipment by a wine fulfillment center
20 licensee on behalf of the direct wine shipper, the
21 name and license number of the wine fulfillment center
22 licensee engaged in the shipment,
- 23 e. the date of the shipment,
- 24 f. the carrier tracking number, and

1 g. the quantity of wine in the shipment;

2 6. Shall ~~annually~~ quarterly pay to the Oklahoma Tax Commission
3 all applicable taxes due on sales authorized by this section to
4 Oklahoma residents in the preceding calendar year. The amount of
5 such taxes shall be calculated as if the sale were in Oklahoma at
6 the location where delivery is made. Upon request, permit holders
7 shall permit the Tax Commission to perform an audit of the permit
8 holder's records in order to assure compliance;

9 7. Shall be deemed to have consented to the jurisdiction of any
10 agency or court of the State of Oklahoma tasked with the enforcement
11 of or adjudication of controversies related to this section and any
12 related laws or rules; and

13 8. Shall require the consumer to verify, by electronic means or
14 otherwise, that the consumer is at least twenty-one (21) years of
15 age.

16 9. Shipments of wine to consumers in Oklahoma from persons who
17 do not possess a current Direct Wine Shipper Permit pursuant to this
18 section are prohibited. Any person that violates this section is
19 guilty of a misdemeanor and subject to a civil penalty as follows:
20 for the first offense shall be fined not more than One Thousand Five
21 Hundred Dollars (\$1,500.00), for a second offense shall be fined not
22 more than Two Thousand Five Hundred Dollars (\$2,500.00), and for a
23 third and subsequent offense shall be fined not more than Five
24 Thousand Dollars (\$5,000.00).

1 D. Every express company, common carrier, contract carrier and
2 every firm or corporation that shall bring, carry or transport wine
3 for delivery to any person in the state, except wine or spirit
4 wholesalers or beer distributors, shall prepare and file quarterly
5 with the ABLE Commission a report, which shall not be subject to the
6 Oklahoma Open Records Act, of all known wine, beer and distilled
7 shipments containing:

8 1. The name of the company, carrier, person, firm or
9 corporation making the report;

10 2. The period of time covered by the report;

11 3. The name, direct shipping permit number and business address
12 of the consignor shipping the wine;

13 4. The weight of the packages shipped;

14 5. The unique tracking number of the delivery; and

15 6. The date of delivery.

16 E. A common carrier shall not deliver a shipment of wine
17 pursuant to this section to any person in this state unless the
18 carrier has verified the validity of the Direct Wine Shipper's
19 Permit prior to accepting shipment. A carrier may consider a direct
20 wine shipper's permit to be valid for the remainder of the stated
21 license period unless notified otherwise by the ABLE Commission.

22 F. Every express company, common carrier, contract carrier and
23 every firm or corporation that shall bring, carry or transport wine
24 for delivery to any person in the state, except wine or spirit

1 wholesalers or beer distributors, shall be deemed to have consented
2 to the jurisdiction of any agency or court of the State of Oklahoma
3 tasked with the enforcement of or adjudication of controversies
4 related to this section and any related laws or rules; and

5 G. 1. No express company, common carrier, or contract carrier
6 nor any representative, agent, or employee on behalf of an express
7 company, common carrier, or contract carrier shall knowingly deliver
8 any shipping container that contains an alcoholic beverage into this
9 state, unless it complies with the provisions of this section.

10 2. No express company, common carrier, or contract carrier nor
11 any representative, agent, or employee on behalf of an express
12 company, common carrier, or contract carrier shall knowingly deliver
13 any shipping container that is clearly labeled as containing an
14 alcoholic beverage including, but not limited to, the lawful
15 shipment of wine under this section, to any person in this state who
16 is under the age of twenty-one (21) years of age at the time of
17 delivery.

18 3. Any express company, common carrier, or contract carrier
19 that carries or transports alcoholic beverages for delivery within
20 this state in violation of this section for the first offense shall
21 be fined not more than One Thousand Five Hundred Dollars
22 (\$1,500.00), for a second offense shall be fined not more than Two
23 Thousand Five Hundred Dollars (\$2,500.00), and for a third and

24

1 subsequent offense shall be fined not more than Five Thousand
2 Dollars (\$5,000.00).

3 4. An express company, common carrier, and contract carrier may
4 be held vicariously liable for the actions of its representatives,
5 agents, and employees for actions in violation of this section.

6 5. The Commission shall notify common carriers of all shipments
7 it has good cause to believe were made unlawfully into the state
8 whether those be through a licensed direct shipper, fulfillment
9 provider or an unlicensed entity. The Commission may prohibit a
10 carrier from transporting alcohol on behalf of a consignor
11 identified as having made an unlawful shipment beginning 15 days
12 from the date of the notice. A common carrier may request, and the
13 Commission must provide, a hearing to show good cause for the
14 continued shipping by said consignor.

15 H. The ABLE Commission shall inspect and audit the records of
16 both the direct wine shipper permit holder, as well as the common
17 carrier and enforce accordingly.

18 I. The provisions of this section do not apply to a motor
19 carrier or freight forwarder as defined in Section 13102 of Title 49
20 of the United States Code or to an air carrier as defined in Section
21 40102 of Title 49 of the United States Code.

22 SECTION 2. This act shall become effective November 1, 2023.

23 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
24 April 10, 2023 - DO PASS AS AMENDED