

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4
5 By: Senator T. Garner
6

A Bill

SENATE BILL 546

For An Act To Be Entitled

8 AN ACT TO AMEND THE DIRECT SHIPMENT OF VINOUS LIQUOR
9 ACT; TO ESTABLISH A WINE DIRECT SHIPPER PERMIT; AND
10 FOR OTHER PURPOSES.

Subtitle

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14 TO AMEND THE DIRECT SHIPMENT OF VINOUS
15 LIQUOR ACT; AND TO ESTABLISH A WINE
16 DIRECT SHIPPER PERMIT.

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20
21 SECTION 1. Arkansas Code Title 3, Chapter 4, is amended to add an
22 additional subchapter to read as follows:

23 Subchapter 11 – Wine Direct Shipper Permit

24
25 3-4-1101. Definition.

26 As used in this subchapter:

27 (1)(A) "Mead" means an alcoholic beverage made through the
28 fermentation of honey as the primary ingredient.

29 (B) "Mead" includes without limitation cyser, braggot,
30 metheglin, and melomels; and

31 (2) "Vinous liquor" means the fermented juices of fruits
32 containing more than five percent (5%) and not more than twenty-one percent
33 (21%) of alcohol by weight.

34
35 3-4-1102. Wine direct shipper permit.

36 (a) A person may apply to the Director of the Alcoholic Beverage



1 Control Division for a wine direct shipper permit that authorizes the wine
 2 direct shipper permit holder to ship vinous liquor and mead directly to a
 3 consumer's home or business address pursuant to the Direct Shipment of Vinous
 4 Liquor Act, § 3-5-1701 et seq.

5 (b) The wine direct shipper permit may be issued by the Alcoholic
 6 Beverage Control Division to a qualified person.

7 (c) A person applying for a wine direct shipper permit shall provide
 8 the division with a copy of the person's current license to manufacture,
 9 supply, or import wine or mead issued by:

10 (1) The person's state of domicile; and

11 (2) The Alcohol and Tobacco Tax and Trade Bureau of the
 12 United States Department of the Treasury.

13 (d)(1) A wine direct shipper permit shall be issued initially for a
 14 fee of one hundred dollars (\$100).

15 (2) A wine direct shipper permit shall expire on June 30 of each
 16 year and may be renewed annually for a fee of fifty dollars (\$50.00).

17 (e) A wine direct shipper permit holder shall collect and pay all
 18 sales taxes and excise taxes due on a sale in this state as required under
 19 the Direct Shipment of Vinous Liquor Act, § 3-5-1701 et seq.

20
 21 3-4-1103. Rules.

22 The Alcoholic Beverage Control Division may adopt rules to:

23 (1) Carry out this subchapter;

24 (2) Establish appropriate application forms, permit forms, and
 25 procedures; and

26 (3) Do all other things necessary to implement this subchapter.

27
 28 SECTION 2. Arkansas Code § 3-5-1702 is amended to read as follows:

29 3-5-1702. Definitions.

30 As used in this subchapter:

31 ~~(1)(A) "Small farm winery" means a wine-making establishment~~
 32 ~~that:~~

33 ~~(A) Is licensed under § 3-5-1601 et seq.; and~~

34 ~~(B) Produced by fermentation at least eight hundred~~
 35 ~~gallons (800 gals.) of wine in the previous calendar year, as reported on the~~
 36 ~~winery's TTB F 5120-17 Report of Wine Premises Operations; "Mead" means an~~

1 alcoholic beverage made through the fermentation of honey as the primary
2 ingredient.

3 (B) "Mead" includes without limitation cyser, braggot,
4 metheglin, and melomels;

5 (2) "Person" means an individual, partnership, limited liability
6 company, limited liability partnership, corporation, firm, company, or other
7 entity doing business in this state; and

8 ~~(2)(3)~~ "Vinous liquor" means the fermented juices of fruits
9 containing more than five percent (5%) and not more than twenty-one percent
10 (21%) of alcohol by weight; and

11 ~~(3) "Winery" means an establishment that makes vinous liquor.~~

12

13 SECTION 3. Arkansas Code § 3-5-1703 is amended to read as follows:

14 3-5-1703. Registration – Renewal fee – Wine direct shipper permit.

15 (a)~~(1)~~ Unless registered under this subchapter, a winery person
16 licensed as a wine or mead manufacturer, supplier, or importer by this state
17 or the state where ~~its~~ the person's principal place of business is located
18 shall not ship vinous liquor or mead to an Arkansas ~~consumer~~ consumer's home
19 or business address.

20 ~~(2) This section does not apply to a small farm winery licensed~~
21 ~~under § 3-5-1601 et seq.~~

22 (b) Prior to the winery's first shipment into or within the state, the
23 winery person seeking to ship vinous liquor or mead directly to a consumer's
24 home or business address in this state shall:

25 (1) ~~Register~~ File an application with the Alcoholic Beverage
26 Control Division;

27 (2) Provide the division with a copy of the ~~winery's~~ person's
28 current license to manufacture, supply, or import mead or wine issued by:

29 (A) The person's state of domicile; and

30 (B) The Alcohol and Tobacco Tax and Trade Bureau of the
31 United States Department of the Treasury; ~~and~~

32 (3) Pay a registration fee of ~~twenty-five~~ one hundred dollars
33 ~~(\$25.00)~~ (\$100);

34 (4) Consent to the jurisdiction of the division or any other
35 state agency and the state courts concerning enforcement of this section or
36 related state laws or rules; and

1 (5) Obtain a wine direct shipper permit.

2 (c) ~~A winery shall renew its application each year with the division~~
3 ~~by:~~

4 ~~(1) Providing the division with a copy of the licenses required under~~
5 ~~subdivision (b)(2) of this section; and~~

6 ~~(2) Paying a renewal fee of twenty five dollars (\$25.00)~~ The wine
7 direct shipper permit holder shall allow the division to perform an audit of
8 the wine direct shipper permit holder's records regarding the shipment of
9 wine or mead into the state upon request.

10 (d) If the wine direct shipper permit holder is located outside of the
11 state, the wine direct shipper permit holder is required to report annually
12 to the division the total amount of wine or mead shipped into the state each
13 preceding calendar year.

14 (e) The wine direct shipper permit holder may renew a wine direct
15 shipper permit each year with the division by:

16 (1) Providing the division with a copy of the license and the
17 permit required under subdivision (b)(2) of this section; and

18 (2) Paying a renewal fee of fifty dollars (\$50.00).

19
20 SECTION 4. Arkansas Code § 3-5-1704 is amended to read as follows:

21 3-5-1704. ~~Purchase~~—Payment of taxes.

22 (a) ~~A consumer must:~~

23 ~~(1) Be physically present at the winery to purchase the vinous~~
24 ~~liquor to be shipped into or within the state; and~~

25 ~~(2) Provide identification to the winery proving that he or she~~
26 ~~is twenty-one (21) years of age or older.~~

27 ~~(b)(1)~~ A winery wine direct shipper permit holder shall collect all
28 sales taxes and excise taxes due on a sale ~~to an individual of in~~ this state
29 as if the sale took place ~~on the premises of an in~~ Arkansas ~~small farm~~
30 ~~winery~~, including without limitation taxes under §§ 3-5-1605, 3-7-104, 3-7-
31 111, and 3-7-201.

32 ~~(2)(b)~~ Taxes collected by the winery wine direct shipper permit
33 holder shall be submitted to the Department of Finance and Administration as
34 directed without limitation under §§ 3-5-1605, 3-7-104, 3-7-111, and 3-7-201.

35 ~~(3)(c)~~ A winery wine direct shipper permit holder shall source
36 the collection of sales and use taxes to the purchaser's delivery address in

1 accordance with § 26-52-521(b)(2).

2

3 SECTION 5. Arkansas Code § 3-5-1705 is amended to read as follows:

4 3-5-1705. Direct shipment.

5 (a) A ~~winery shall~~ wine direct shipper permit holder may ship ~~only~~ a
6 vinous liquor or mead to a ~~private residence~~ consumer's home or business
7 address.

8 (b) A ~~winery~~ wine direct shipper permit holder may ~~only~~ ship ~~one (1)~~
9 case up to and including twenty-four (24) nine-liter cases of vinous liquor
10 or mead per consumer ~~in any calendar quarter~~ annually for the consumer's
11 personal use and not for resale.

12 (c)~~(1)~~ A wine direct shipper permit holder shall ensure that ~~shipment~~
13 ~~of a vinous liquor shall have a shipping label provided by the Alcoholic~~
14 ~~Beverage Control Division affixed to the shipping package~~ all containers of
15 vinous liquor or mead shipped to and delivered within this state are
16 conspicuously labeled as follows:

17 "CONTAINS ALCOHOL; SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR
18 DELIVERY".

19 ~~(2) The fee for each label for a shipment shall not exceed ten~~
20 ~~dollars (\$10.00).~~

21

22 SECTION 6. Arkansas Code § 3-5-1706 is amended to read as follows:

23 3-5-1706. Delivery.

24 A ~~winery~~ wine direct shipper permit holder shall have ~~the a~~ a vinous
25 liquor or mead delivered to an Arkansas ~~consumer~~ consumer's home or business
26 address during the hours of the day that alcoholic beverages may be purchased
27 in the state.

28

29 SECTION 7. Arkansas Code § 3-5-1708 is amended to read as follows:

30 3-5-1708. Disposition of funds.

31 (a) Permit fees or taxes, ~~label fees,~~ penalties, fines, proceeds of
32 all forfeitures, special inspection fees, and costs received by the Secretary
33 of the Department of Finance and Administration under this subchapter shall
34 be general revenues and shall be deposited into the State Treasury to the
35 credit of the State Apportionment Fund.

36 (b) The Treasurer of State shall allocate and transfer ~~those~~ the

1 revenues to the various State Treasury funds participating in general
 2 revenues in the respective proportions to each as provided by and to be used
 3 for the respective purposes set forth in the Revenue Stabilization Law, § 19-
 4 5-101 et seq.

5
 6 SECTION 8. Arkansas Code § 3-5-1709 is repealed.

7 ~~3-5-1709. Small farm winery shipment.~~

8 ~~(a)(1) A small farm winery licensee with a wine wholesale permit under~~
 9 ~~§ 3-5-1602(c)(1)(E) may ship small farm winery wine under this subchapter to~~
 10 ~~a private resident without the private resident having been physically~~
 11 ~~present or having made an in-person purchase at the small farm winery if the~~
 12 ~~shipment includes only small farm winery wine.~~

13 ~~(2) Additional shipping registration of a small farm winery is~~
 14 ~~not required for a shipment under subdivision (a)(1) of this section.~~

15 ~~(b) A private resident shall provide identification to the small farm~~
 16 ~~winery proving that he or she is twenty-one (21) years of age or older.~~

17 ~~(c) A small farm winery may ship only one (1) case of small farm~~
 18 ~~winery wine per private resident in any month.~~

19 ~~(d) A small farm winery shipping under this subchapter shall ensure~~
 20 ~~that all containers of small farm winery wine delivered within this state are~~
 21 ~~conspicuously labeled as follows:~~

22 ~~“CONTAINS ALCOHOL; SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR~~
 23 ~~DELIVERY”.~~

24 ~~(e)(1) A small farm winery shall collect all sales taxes and excise~~
 25 ~~taxes due on a sale to an individual of this state as if the sale took place~~
 26 ~~on the premises of the small farm winery, including without limitation taxes~~
 27 ~~under §§ 3-5-1605, 3-7-104, 3-7-111, and 3-7-201.~~

28 ~~(2) Taxes collected by the small farm winery shall be submitted~~
 29 ~~to the Department of Finance and Administration as directed without~~
 30 ~~limitation under §§ 3-5-1605, 3-7-104, 3-7-111, and 3-7-201.~~

31 ~~(3) A small farm winery shall source the collection of sales and~~
 32 ~~use taxes to the purchaser's delivery address in accordance with § 26-52-~~
 33 ~~521(b)(2).~~

34 ~~(f) A small farm winery that makes a direct shipment of small farm~~
 35 ~~winery wine under this section shall maintain records regarding each shipment~~
 36 ~~of small farm winery wine that include the:~~

1 ~~(B) The last date applications will be accepted; and~~

2 ~~(C) The date of a drawing to determine which applicants~~
 3 ~~will be awarded a permit if the number of applicants exceeds the number of~~
 4 ~~permits authorized by the board.~~

5 ~~(4) The board shall not accept an application more than ninety~~
 6 ~~(90) days after the date of publication of the notice required under~~
 7 ~~subdivision (b)(2) of this section.~~

8 ~~(5)(A) If the number of applicants for a permit exceeds the~~
 9 ~~number of permits authorized by the board, the Director of the Alcoholic~~
 10 ~~Beverage Control Division shall conduct a drawing not earlier than one~~
 11 ~~hundred twenty (120) days after the publication of the notice specified in~~
 12 ~~subdivision (b)(2) of this section, nor later than one hundred eighty (180)~~
 13 ~~days after publication of the notice.~~

14 ~~(B)(i) On the date of the drawing, each applicant for a~~
 15 ~~permit or his or her agent shall draw a number between one (1) and a number~~
 16 ~~equal to the number of permits to be granted of applications filed.~~

17 ~~(ii) Position numbers shall not be transferred or~~
 18 ~~assigned.~~

19 ~~(6) Upon payment of a licensing fee of twenty five dollars~~
 20 ~~(\$25.00), the director shall issue a permit to each eligible licensee that~~
 21 ~~draws a number one (1) through the number authorized by the board for the~~
 22 ~~drawing.~~

23 ~~(c) A small farm winery shall renew its small farm winery private-~~
 24 ~~resident shipping permit each year with the division by paying a renewal fee~~
 25 ~~of twenty five dollars (\$25.00).~~

26

27 SECTION 10. Arkansas Code Title 3, Chapter 5, Subchapter 17, is
 28 amended to add an additional section to read as follows:

29 3-5-1711. Administration and penalties.

30 (a)(1) The Alcoholic Beverage Control Division may enforce this
 31 subchapter by administrative proceedings to suspend or revoke a wine direct
 32 shipper permit.

33 (2) The division may accept payment of an offer in compromise in
 34 lieu of suspension of the wine direct shipper permit holder's permit as
 35 determined by rule promulgated by the division.

36 (b) A person that does not hold a wine direct shipper permit shall not

1 ship wine or mead directly to a consumer's home or business address.

2 (c) A person that knowingly makes, participates in, transports,
3 imports, or receives a shipment from a person without a wine direct shipper
4 permit upon conviction may be subject to the following:

5 (1) An administrative penalty as established by the division for
6 a first offense;

7 (2) A Class C misdemeanor for a second offense; and

8 (3) A Class D felony for a third and subsequent offense.

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