

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1540

By: Virgin

6  
7 COMMITTEE SUBSTITUTE

8 An Act relating to alcoholic beverages; amending  
9 Section 16, Chapter 366, O.S.L. 2016 (37A O.S. Supp.  
10 2016, Section 2-104), which relates to winemaker  
11 licenses; authorizing certain sales of wine by  
12 licensee; amending Section 76, Chapter 366, O.S.L.  
13 2016 (37A O.S. Supp. 2016, Section 3-106), which  
14 relates to direct wine shipping permits; eliminating  
the Direct Wine Consumer's Permit; eliminating  
15 certain application criteria; eliminating certain  
16 rulemaking authority; eliminating certain labeling  
17 requirement; modifying prohibition on certain types  
of shipments; requiring certain age verification; and  
providing an effective date.

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

19 SECTION 1. AMENDATORY Section 16, Chapter 366, O.S.L.  
20 2016 (37A O.S. Supp. 2016, Section 2-104), is amended to read as  
21 follows:

22 Section 2-104. A winemaker license shall authorize the holder  
23 thereof:  
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1 1. To manufacture (including such mixing, blending and cellar  
2 treatment as authorized by federal law), bottle, package and store  
3 on licensed premises wine containing not more than twenty-four  
4 percent (24%) alcohol by volume, provided the bottle or package  
5 sizes authorized shall be limited to the capacities approved by the  
6 United States Alcohol and Tobacco Tax and Trade Bureau;

7 2. To sell wine in this state to licensed wholesalers and  
8 manufacturers;

9 3. To sell ~~bottles of~~ wine produced at the winery from grapes  
10 and other fruits and berries grown in this state, if available, for  
11 either on-premises or off-premises consumption to consumers on the  
12 premises of the winery;

13 4. To serve free samples of wine produced at the winery to  
14 visitors twenty-one (21) years of age and older. For purposes of  
15 this section, no visitor may sample more than a total of six (6)  
16 fluid ounces of wine per day. The winery shall restrict the  
17 distribution and consumption of wine samples to an area within the  
18 licensed premises designated by the winery. A current floor plan  
19 that includes the designated sampling area shall be on file with the  
20 ABLE Commission. No visitor under twenty-one (21) years of age  
21 shall be permitted to enter the designated sampling area when  
22 samples are being distributed and consumed. Samples of wine served  
23 by a winery under this section shall not be considered a sale of  
24 wine within the meaning of Article XXVIII A of the Oklahoma

1 Constitution or Section ~~3~~ 1-103 of this ~~act~~ title; provided, such  
2 samples of wine shall be considered removed or withdrawn from the  
3 winery for use or consumption within the meaning of Section ~~113~~ 5-  
4 110 of this ~~act~~ title for excise tax determination and reporting  
5 requirements;

6 5. To serve samples of wine produced at the winery at public  
7 events such as festivals and trade shows;

8 6. To sell wine produced at the winery, in original sealed  
9 containers, at public events such as festivals and trade shows;

10 7. To sell wine out of this state to qualified persons; and

11 8. To purchase from licensed winemakers, distillers and  
12 rectifiers in this state, and to import into this state wine, brandy  
13 and fruit spirits for use in manufacturing in accordance with  
14 federal laws and regulations.

15 SECTION 2. AMENDATORY Section 76, Chapter 366, O.S.L.  
16 2016 (37A O.S. Supp. 2016, Section 3-106), is amended to read as  
17 follows:

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

1 more than thirty nine-liter cases of wine per year under the  
2 provisions of this section.

3 ~~B. A Direct Wine Consumer's Permit may be issued by the ABLE~~  
4 ~~Commission to a resident who is twenty-one (21) years of age or~~  
5 ~~older and wishes to purchase wine directly from a winery pursuant to~~  
6 ~~this section.~~

7 ~~C.~~ The ABLE Commission shall promulgate rules governing the  
8 application, issuance and renewal of Direct Wine Shipper's Permits,  
9 which shall include but not be limited to:

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

12 2. Payment of a registration fee of Three Hundred Dollars  
13 (\$300.00) for original permits and One Hundred Fifty Dollars  
14 (\$150.00) for renewal permits; and

15 3. Any other documentation that the ABLE Commission believes is  
16 reasonably necessary to verify the identity and physical location of  
17 the winery.

18 ~~D. The ABLE Commission shall promulgate rules governing the~~  
19 ~~application, issuance and renewal of Direct Wine Consumer's Permits,~~  
20 ~~which shall include but not be limited to:~~

21 ~~1. A sworn statement verifying that the applicant is at least~~  
22 ~~twenty-one (21) years of age upon the date of application submission~~  
23 ~~and that the wine is intended for personal use and not for resale;~~  
24 ~~and~~

1       ~~2. Any other documentation that the ABLE Commission believes is~~  
2 ~~reasonably necessary to verify the identity or age of the applicant.~~

3       E. C. With regard to direct wine shipments permitted by this  
4 section, Direct Wine Shipper permit holders:

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

7       2. Shall not ship wine intended for resale;

8       3. Shall ensure that all containers of wine shipped directly to  
9 a resident in this state ~~include the Direct Wine Consumer's Permit~~  
10 ~~Number issued by the ABLE Commission and~~ are conspicuously labeled  
11 with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR  
12 OLDER REQUIRED FOR DELIVERY.";

13       4. Shall require the transporter or common carrier that  
14 delivers the wine to obtain the signature of a person twenty-one  
15 (21) years of age or older at the delivery address at the time of  
16 delivery. At the expense of the Direct Wine Shipper, the Direct  
17 Wine Shipper shall receive a delivery confirmation from the express  
18 company, common carrier or contract carrier indicating the location  
19 of delivery, time of delivery and the name and signature of the  
20 individual who accepted the delivery. The ABLE Commission shall  
21 design and create a label or approve a label that must be affixed to  
22 the shipping container by the licensee;

23       5. Shall not ship into the state, wine otherwise available in  
24 Oklahoma;

1           6. Shall report to the ABLE Commission annually, by a method  
2 prescribed by the ABLE Commission, the total amount of wine shipped  
3 into the state the preceding calendar year;

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

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

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

18           F. D. No express company, common carrier or contract carrier  
19 nor any representative, agent or employee on behalf of the same  
20 shall knowingly deliver any shipping container that contains an  
21 alcoholic beverage into this state, unless it complies with the  
22 provisions of this section. No express company, common carrier or  
23 contract carrier nor any representative, agent or employee on behalf  
24 of the same shall knowingly deliver any shipping container that is

1 clearly labeled as containing an alcoholic beverage, including but  
2 not limited to the lawful shipment of wine under this section, to  
3 any person in this state who is under the age of twenty-one (21) at  
4 the time of delivery. Any express company, common carrier or  
5 contract carrier that carries or transports alcoholic beverages for  
6 delivery within this state in violation of this section shall be  
7 guilty of a misdemeanor and for the first offense be fined not more  
8 than Two Thousand Five Hundred Dollars (\$2,500.00), for a second  
9 offense shall be fined not more than Five Thousand Dollars  
10 (\$5,000.00) and for a third and subsequent offense be fined not more  
11 than Ten Thousand Dollars (\$10,000.00). An express company, common  
12 carrier and contract carrier shall be held vicariously liable for  
13 the actions of its representatives, agents and employees for actions  
14 in violation of this section.

15 SECTION 3. This act shall become effective October 1, 2018.

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