

1 **SENATE FLOOR VERSION**

2 April 12, 2017

3 **AS AMENDED**

4 ENGROSSED HOUSE
5 BILL NO. 1540

6 By: Virgin of the House

7 and

8 Bice of the Senate

9 **[alcoholic beverages - winemaker licenses - certain**
10 **sales of wine by licensee - direct wine shipping**
11 **permits - Direct Wine Consumer's Permit - effective**
12 **date]**

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

14 SECTION 1. AMENDATORY Section 16, Chapter 366, O.S.L.
15 2016 (37A O.S. Supp. 2016, Section 2-104), is amended to read as
16 follows:

17 Section 2-104. A winemaker license shall authorize the holder
18 thereof:

19 1. To manufacture (including such mixing, blending and cellar
20 treatment as authorized by federal law), bottle, package and store
21 on licensed premises wine containing not more than twenty-four
22 percent (24%) alcohol by volume, provided the bottle or package
23 sizes authorized shall be limited to the capacities approved by the
24 United States Alcohol and Tobacco Tax and Trade Bureau;

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

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

7 4. To serve free samples of wine produced at the winery to
8 visitors twenty-one (21) years of age and older. For purposes of
9 this section, no visitor may sample more than a total of six (6)
10 fluid ounces of wine per day. The winery shall restrict the
11 distribution and consumption of wine samples to an area within the
12 licensed premises designated by the winery. A current floor plan
13 that includes the designated sampling area shall be on file with the
14 ABLE Commission. No visitor under twenty-one (21) years of age
15 shall be permitted to enter the designated sampling area when
16 samples are being distributed and consumed. Samples of wine served
17 by a winery under this section shall not be considered a sale of
18 wine within the meaning of Article XXVIII A of the Oklahoma
19 Constitution or Section ~~3~~ 1-103 of this ~~act~~ title; provided, such
20 samples of wine shall be considered removed or withdrawn from the
21 winery for use or consumption within the meaning of Section ~~113~~ 5-
22 110 of this ~~act~~ title for excise tax determination and reporting
23 requirements;

24

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

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

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

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

10 SECTION 2. AMENDATORY Section 76, Chapter 366, O.S.L.
11 2016 (37A O.S. Supp. 2016, Section 3-106), is amended to read as
12 follows:

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

22 ~~B. A Direct Wine Consumer's Permit may be issued by the ABLE~~
23 ~~Commission to a resident who is twenty-one (21) years of age or~~
24

1 ~~older and wishes to purchase wine directly from a winery pursuant to~~
2 ~~this section.~~

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

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

8 2. Payment of a registration fee of Three Hundred Dollars
9 (\$300.00) for original permits and One Hundred Fifty Dollars
10 (\$150.00) for renewal permits; and

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

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

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

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

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

- 1 1. Shall not ship more than six nine-liter cases of wine
2 annually to any person for his or her personal use;
- 3 2. Shall not ship wine intended for resale;
- 4 3. Shall ensure that all containers of wine shipped directly to
5 a resident in this state ~~include the Direct Wine Consumer's Permit~~
6 ~~Number issued by the ABLE Commission~~ and are conspicuously labeled
7 with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR
8 OLDER REQUIRED FOR DELIVERY.";
- 9 4. Shall require the transporter or common carrier that
10 delivers the wine to obtain the signature of a person twenty-one
11 (21) years of age or older at the delivery address at the time of
12 delivery. At the expense of the Direct Wine Shipper, the Direct
13 Wine Shipper shall receive a delivery confirmation from the express
14 company, common carrier or contract carrier indicating the location
15 of delivery, time of delivery and the name and signature of the
16 individual who accepted the delivery. The ABLE Commission shall
17 design and create a label or approve a label that must be affixed to
18 the shipping container by the licensee;
- 19 5. Shall not ship into the state, wine otherwise available in
20 Oklahoma;
- 21 6. Shall report to the ABLE Commission annually, by a method
22 prescribed by the ABLE Commission, the total amount of wine shipped
23 into the state the preceding calendar year;
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1 7. Shall annually pay to the Oklahoma Tax Commission all
2 applicable taxes due on sales authorized by this section to Oklahoma
3 residents in the preceding calendar year. The amount of such taxes
4 shall be calculated as if the sale were in Oklahoma at the location
5 where delivery is made. Upon request, permit holders shall permit
6 the Tax Commission to perform an audit of the permit holder's
7 records in order to assure compliance; ~~and~~

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

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

15 ~~F.~~ D. No express company, common carrier or contract carrier
16 nor any representative, agent or employee on behalf of the same
17 shall knowingly deliver any shipping container that contains an
18 alcoholic beverage into this state, unless it complies with the
19 provisions of this section. No express company, common carrier or
20 contract carrier nor any representative, agent or employee on behalf
21 of the same shall knowingly deliver any shipping container that is
22 clearly labeled as containing an alcoholic beverage, including but
23 not limited to the lawful shipment of wine under this section, to
24 any person in this state who is under the age of twenty-one (21) at

1 the time of delivery. Any express company, common carrier or
2 contract carrier that carries or transports alcoholic beverages for
3 delivery within this state in violation of this section shall be
4 guilty of a misdemeanor and for the first offense be fined not more
5 than Two Thousand Five Hundred Dollars (\$2,500.00), for a second
6 offense shall be fined not more than Five Thousand Dollars
7 (\$5,000.00) and for a third and subsequent offense be fined not more
8 than Ten Thousand Dollars (\$10,000.00). An express company, common
9 carrier and contract carrier shall be held vicariously liable for
10 the actions of its representatives, agents and employees for actions
11 in violation of this section.

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

13 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
14 April 12, 2017 - DO PASS AS AMENDED
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