

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2640

By: Echols of the House

and

Coleman of the Senate

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9 COMMITTEE SUBSTITUTE

10 An Act relating to alcoholic beverages; amending 37A
11 O.S. 2021, Section 3-106, which relates to direct
12 wine shipper's permit; modifying requirements for
13 certain reports; providing information to be
14 reported; prohibiting shipment of wine to consumers
15 without a permit; providing penalties; providing that
16 certain shippers have consented to certain state
17 agency and court jurisdiction; prohibiting certain
18 acts; providing penalties; requiring notice to
19 carriers of shipments that are unlawful; requiring
20 inspection and auditing of records; and providing an
21 effective date.

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

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

 Section 3-106. A. A Direct Wine Shipper's Permit may be issued
by the Oklahoma ABLE Commission to a winery licensed in this or any
other state within the United States as a wine producer. A Direct
Wine Shipper's Permit allows a winery to ship up to six nine-liter

1 cases of wine annually directly to an Oklahoma resident who is
2 twenty-one (21) years of age or older for such resident's personal
3 use and not for resale. No resident shall be permitted to purchase
4 more than thirty nine-liter cases of wine per year under the
5 provisions of this section.

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

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

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

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

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

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

21 2. Shall not ship wine intended for resale;

22 3. Shall ensure that all packages containing wine shipped
23 directly to a resident in this state are conspicuously labeled with
24 the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER

1 REQUIRED FOR DELIVERY" or are conspicuously labeled with alternative
2 wording preapproved by the ABLE Commission;

3 4. Shall require the transporter or common carrier that
4 delivers the wine to obtain the signature of a person twenty-one
5 (21) years of age or older at the delivery address at the time of
6 delivery. At the expense of the Direct Wine Shipper, the Direct
7 Wine Shipper shall receive a delivery confirmation from the express
8 company, common carrier or contract carrier indicating the location
9 of delivery and the name and signature of the individual who
10 accepted the delivery. The ABLE Commission shall design and create
11 a label or approve a label that must be affixed to the shipping
12 container by the licensee;

13 5. Shall report to the ABLE Commission ~~annually,~~ quarterly by a
14 method prescribed by the ABLE Commission, ~~the total amount of wine~~
15 ~~shipped into the state the preceding calendar year~~ all of the
16 following information for each wine shipment into the state pursuant
17 to this section:

- 18 a. the name and address of the Oklahoma resident who
19 placed the order,
- 20 b. for each completed shipment, evidence of signature by
21 an individual of age 21 or older,
- 22 c. the name and license number of the common or permit
23 carrier engaged in the shipment,

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- 1 d. for each shipment by a wine fulfillment center
2 licensee on behalf of the direct wine shipper, the
3 name and license number of the wine fulfillment center
4 licensee engaged in the shipment,
5 e. the date of the shipment,
6 f. the carrier tracking number, and
7 g. the quantity of wine in the shipment;

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

15 7. Shall be deemed to have consented to the jurisdiction of any
16 agency or court of the State of Oklahoma tasked with the enforcement
17 of or adjudication of controversies related to this section and any
18 related laws or rules; and

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

22 9. Shipments of wine to consumers in Oklahoma from persons who
23 do not possess a current Direct Wine Shipper Permit pursuant to this
24

1 section are prohibited. Any person that violates this section is
2 guilty of a Misdemeanor and subject to a civil penalty as follows:
3 for the first offense shall be fined not more than One Thousand Five
4 Hundred Dollars (\$1,500.00), for a second offense shall be fined not
5 more than Two Thousand Five Hundred Dollars (\$2,500.00), and for a
6 third and subsequent offense shall be fined not more than Five
7 Thousand Dollars (\$5,000.00).

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

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

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

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

20 4. The weight of the packages shipped;

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

22 6. The date of delivery.

23 E. A common carrier shall not deliver a shipment of wine
24 pursuant to this section to any person in this state unless the

1 carrier has verified the validity of the Direct Wine Shipper's
2 Permit prior to accepting shipment. A carrier may consider a direct
3 wine shipper's permit to be valid for the remainder of the stated
4 license period unless notified otherwise by the ABLE Commission.

5 F. Every express company, common carrier, contract carrier and
6 every firm or corporation that shall bring, carry or transport wine
7 for delivery to any person in the state, except wine or spirit
8 wholesalers or beer distributors, shall be deemed to have consented
9 to the jurisdiction of any agency or court of the State of Oklahoma
10 tasked with the enforcement of or adjudication of controversies
11 related to this section and any related laws or rules; and

12 G. 1. No express company, common carrier, or contract carrier
13 nor any representative, agent, or employee on behalf of an express
14 company, common carrier, or contract carrier shall knowingly deliver
15 any shipping container that contains an alcoholic beverage into this
16 state, unless it complies with the provisions of this section.

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

1 3. Any express company, common carrier, or contract carrier
2 that carries or transports alcoholic beverages for delivery within
3 this state in violation of this section for the first offense shall
4 be fined not more than One Thousand Five Hundred Dollars
5 (\$1,500.00), for a second offense shall be fined not more than Two
6 Thousand Five Hundred Dollars (\$2,500.00), and for a third and
7 subsequent offense shall be fined not more than Five Thousand
8 Dollars (\$5,000.00).

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

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

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

1 I. The provisions of this section do not apply to a motor
2 carrier or freight forwarder as defined in Section 13102 of Title 49
3 of the United States Code or to an air carrier as defined in Section
4 40102 of Title 49 of the United States Code.

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

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7 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 03/01/2023 - DO PASS,
8 As Amended and Coauthored.

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