

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1338

By: Bice of the Senate

and

McEntire of the House

COMMITTEE SUBSTITUTE

An Act relating to alcoholic beverages; amending Section 76, Chapter 366, O.S.L. 2016, as amended by Section 3, Chapter 307, O.S.L. 2017 (37A O.S. Supp. 2017, Section 3-106), which relates to the Alcoholic Beverage Control Act; modifying requirements applicable to holders of Direct Wine Shipper Permits; providing certain exemption from Oklahoma Open Records Act; modifying requirements and penalties for violation applicable to certain entities delivering wine into state; requiring certain quarterly reports; providing for confidentiality of reports; repealing Section 76, Chapter 366, O.S.L. 2016, as amended by Section 1, Chapter 360, O.S.L. 2017 (37A O.S. Supp. 2017, Section 3-106), which is a duplicate section and which relates to Direct Wine Shipper's Permits; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 76, Chapter 366, O.S.L. 2016, as amended by Section 3, Chapter 307, O.S.L. 2017 (37A O.S. Supp. 2017, Section 3-106), is amended to read as follows:

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

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

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

15 2. Payment of a registration fee of Three Hundred Dollars
16 (\$300.00) for original permits and One Hundred Fifty Dollars
17 (\$150.00) for renewal permits; and

18 3. Any other documentation that the ABLE Commission believes is
19 reasonably necessary to verify the identity and physical location of
20 the winery.

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

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

2. Shall not ship wine intended for resale;

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

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

~~5. Shall not ship into the state wine otherwise available in Oklahoma;~~

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

~~7.~~ 6. Shall annually pay to the Oklahoma Tax Commission all applicable taxes due on sales authorized by this section to Oklahoma residents in the preceding calendar year. The amount of such taxes

1 shall be calculated as if the sale were in Oklahoma at the location
2 where delivery is made. Upon request, permit holders shall permit
3 the Tax Commission to perform an audit of the permit holder's
4 records in order to assure compliance;

5 ~~8.~~ 7. Shall be deemed to have consented to the jurisdiction of
6 any agency or court of the State of Oklahoma tasked with the
7 enforcement of or adjudication of controversies related to this
8 section and any related laws or rules; and

9 ~~9.~~ 8. Shall require the consumer to verify, by electronic means
10 or otherwise, that the consumer is at least twenty-one (21) years of
11 age.

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

1 ~~misdemeanor and for the first offense be fined not more than Two~~
2 ~~Thousand Five Hundred Dollars (\$2,500.00), for a second offense~~
3 ~~shall be fined not more than Five Thousand Dollars (\$5,000.00) and~~
4 ~~for a third and subsequent offense be fined not more than Ten~~
5 ~~Thousand Dollars (\$10,000.00). An express company, common carrier~~
6 ~~and contract carrier shall be held vicariously liable for the~~
7 ~~actions of its representatives, agents and employees for actions in~~
8 ~~violation of this section.~~

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

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

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

19 3. The name and business address of the consignor shipping the
20 wine;

21 4. The name and address of consignee receiving the wine;

22 5. The quantity of alcoholic beverages delivered to each
23 consignee;

24 6. The unique tracking number of the delivery; and

1 7. The date of delivery.

2 SECTION 2. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 24A.31 of Title 51, unless there
4 is created a duplication in numbering, reads as follows:

5 Reports produced according to the provisions established in
6 Section 3-106 of Title 37A of the Oklahoma Statutes, shall be known
7 as "Confidential Wine Shipment Reports", and may be kept
8 confidential by a public body.

9 SECTION 3. REPEALER Section 76, Chapter 366, O.S.L.
10 2016, as amended by Section 1, Chapter 360, O.S.L. 2017 (37A O.S.
11 Supp. 2017, Section 3-106), is hereby repealed.

12 SECTION 4. This act shall become effective October 1, 2018.

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