

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 ENGROSSED SENATE
5 BILL NO. 1537

By: David of the Senate

and

Kannady of the House

8 An Act relating to alcoholic beverages; amending
9 Section 17, Chapter 366, O.S.L. 2016, Section 69,
10 Chapter 366, O.S.L. 2016 and Section 76, Chapter 366,
11 O.S.L. 2016, as amended by Section 3, Chapter 307,
12 O.S.L. 2017 (37A O.S. Supp. 2017, Sections 2-105, 2-
13 157 and 3-106), which relate to self-distribution
14 license and direct wine shipper's permit; expanding
15 self-distribution authority; removing certain permit
16 for certain wine shipment; deleting certain rule
17 requirement; deleting certain prohibition to
18 shipments; modifying contents of report; exempting
19 certain carriers defined under the United States
20 Code; amending Section 128, Chapter 366, O.S.L. 2016
21 (37A O.S. Supp. 2017, Section 5-125), which relates
22 to information required for delivery of alcoholic
23 beverages; modifying information required; amending
24 Section 141, Chapter 366, O.S.L. 2016 (37A O.S. Supp.
25 2017, Section 6-101), which relates to prohibited
26 acts; clarifying language; providing for Confidential
27 Wine Shipment Reports to be confidential; repealing
28 Section 76, Chapter 366, O.S.L. 2016, as amended by
29 Section 1, Chapter 360, O.S.L. 2017 (37A O.S. Supp.
30 2017, Section 3-106), which relates to direct wine
31 shipper permit and which is a duplicate section;
32 repealing Section 126, Chapter 366, O.S.L. 2016 (37A
33 O.S. Supp. 2017, Section 5-123), which relates to
34 shippers of alcoholic beverages other than
35 manufacturers and distributors; updating statutory
36 language; providing for codification; and providing
37 an effective date.

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

2 SECTION 1. AMENDATORY Section 17, Chapter 366, O.S.L.
3 2016 (37A O.S. Supp. 2017, Section 2-105), is amended to read as
4 follows:

5 Section 2-105. A. A winemaker self-distribution license shall
6 authorize a licensed winemaker within or without this state which is
7 permitted by Article XXVIII A of the Oklahoma Constitution and this
8 section:

9 1. To distribute its wine directly to retail spirits, retail
10 wine and retail beer licensees, mixed beverage licensees, beer and
11 wine licensees, and restaurants in this state; and

12 2. If such a winemaker elects to do so, to sell and deliver its
13 wines directly to licensed retail package stores, mixed beverage
14 licensees, beer and wine licensees, and restaurants in this state in
15 full case lots only, and in accordance with the provisions of the
16 Oklahoma Alcoholic Beverage Control Act and such rules as the ABLE
17 Commission shall promulgate.

18 B. A winemaker either within or without this state that
19 annually produces no more than fifteen thousand (15,000) gallons of
20 wine may elect to sell and self-distribute the wine produced by such
21 winemaker directly to licensed retail package stores, mixed beverage
22 licensees, beer and wine licensees, and restaurants in this state;
23 provided:

24

1 1. Any such winemaker which elects to directly sell its wine to
2 package stores, mixed beverage licensees, beer and wine licensees,
3 and restaurants shall not also use a licensed wholesale distributor
4 as a means of distribution, and shall be required to sell its wines
5 to every package store, mixed beverage licensee, beer and wine
6 licensee, and restaurant licensee who desires to purchase the same,
7 on the same price basis and without discrimination;

8 2. If a winemaker or winery sells directly to a retail package
9 store, mixed beverage licensee, beer and wine licensee or
10 restaurant, the winemaker shall transport the wine from the
11 winemaker's winery to the premises where the wine is to be delivered
12 only in vehicles owned or leased by the winemaker and not by common
13 or private contract carrier and shall obtain all necessary permits
14 as required by the Oklahoma Alcoholic Beverage Control Act; and

15 3. If the production volume limit applicable to winemakers is
16 ruled to be unconstitutional by a court of competent jurisdiction,
17 then no winemaker shall be permitted to directly sell its wine to
18 retail package stores, non-package store retailers, mixed beverage
19 licensees, beer and wine licensees or restaurants in this state.

20 SECTION 2. AMENDATORY Section 69, Chapter 366, O.S.L.
21 2016 (37A O.S. Supp. 2017, Section 2-157), is amended to read as
22 follows:

23 Section 2-157. A. Every winemaker or small farm winery
24 electing to directly sell its wines to retailers, mixed beverage

1 licensees, beer and wine licensees, and restaurants must obtain a
2 winery self-distribution license and pay the applicable license fee
3 and shall register its products and post its prices with the state
4 in the same manner required of the holder of a nonresident seller
5 license.

6 B. Every winemaker or small farm winery electing to directly
7 sell its wines to retailers, mixed beverage licensees, beer and wine
8 licensees, and restaurants shall report all sales to retail package
9 stores, mixed beverage licensees, beer and wine licensees, and
10 restaurants in this state to the ABLE Commission and to the Oklahoma
11 Tax Commission at least monthly, or in accordance with such rules as
12 the ABLE Commission shall promulgate and shall pay to the Tax
13 Commission all excise and other taxes imposed by this state upon
14 such wine in the same manner required of the holder of a nonresident
15 seller license.

16 C. Any self-distributing winemaker within or without this state
17 who shall, in any calendar year, exceed the production volume limit
18 provided for in subsection B of Section ~~47~~ 2-105 of this ~~act~~ title,
19 shall immediately notify the ABLE Commission of such fact and shall
20 thereafter have the option to sell the wines they produce to every
21 licensed wholesale distributor who desires to purchase the same, on
22 the same price basis and without discrimination, and shall
23 thereafter be allowed to sell such beverages only to such licensed
24 wholesale distributors or cease to sell its products in this state.

1 D. All winemakers who conduct business in this state shall be
2 prohibited from creating, forming or participating in any kind of a
3 cooperative or pooled transportation or distribution arrangement.

4 E. Any licensed winemaker or winery that sells or distributes
5 its wine directly to a retailer, mixed beverage licensee, beer and
6 wine licensee or restaurant in this state after having exceeded the
7 production volume limit provided for in subsection B of Section ~~17~~
8 2-105 of this ~~act~~ title in any calendar year shall be subject to a
9 fine of Ten Thousand Dollars (\$10,000.00). In addition, if the
10 violation is a second or subsequent violation, the winemaker or
11 winery shall not be allowed to transport wine to a retail package
12 store or restaurant for three (3) years from the date of the second
13 or subsequent violation.

14 F. If Section 2 of Article XXVIII A of the Oklahoma Constitution
15 is ruled to be unconstitutional by a court of competent
16 jurisdiction, then any licensed winemaker or winery that then
17 continues to sell or distribute its wine directly to a retail
18 package store, mixed beverage licensee, beer and wine licensee or
19 restaurant in this state shall be subject to a fine of Ten Thousand
20 Dollars (\$10,000.00) per violation.

21 SECTION 3. AMENDATORY Section 76, Chapter 366, O.S.L.
22 2016, as amended by Section 3, Chapter 307, O.S.L. 2017 (37A O.S.
23 Supp. 2017, Section 3-106), is amended to read as follows:
24

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 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 Oklahoma Open Records Act, of known wine 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 and business address of the consignor shipping the
19 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. The provisions of this section do not apply to a motor
24 carrier or freight forwarder as defined in Section 13102 of Title 49

1 of the United States Code or to an air carrier as defined in Section
2 40102 of Title 49 of the United States Code.

3 SECTION 4. AMENDATORY Section 128, Chapter 366, O.S.L.
4 2016 (37A O.S. Supp. 2017, Section 5-125), is amended to read as
5 follows:

6 Section 5-125. A. Every manufacturer, wine and spirits
7 wholesaler, beer distributor or nonresident seller, selling
8 alcoholic beverages in this state, or selling alcoholic beverages
9 for shipment into this state shall, at the time such sale is made,
10 make and deliver to the purchaser or transporter an invoice, bill of
11 lading, manifest or other document describing such alcoholic
12 beverages, showing:

- 13 1. The date of such sale or delivery;
- 14 2. The name and ABLE Commission license number of the seller;
- 15 3. The point of origin of the movement of such alcoholic
16 beverages and the destination of same;
- 17 4. The kind and quantity and a description of such alcoholic
18 beverages, including the proof of all spirits;
- 19 5. The name and ABLE Commission license number of the
20 purchaser;
- 21 6. The sale price; and
- 22 7. Such other information as the Oklahoma Tax Commission may,
23 by form or rule, require.

1 Every such invoice, bill of lading, manifest or other document
2 describing such alcoholic beverages, except beer, must be identified
3 by consecutive numbers printed upon the invoice or document, and
4 each such seller and purchaser must account for each copy of his or
5 her invoice and each number thereof.

6 ~~B. Every common carrier and private carrier, and every person~~
7 ~~who transports any alcoholic beverages from any point within this~~
8 ~~state to any other point within or without this state, or who~~
9 ~~transports alcoholic beverages into this state, shall at all times~~
10 ~~while such alcoholic beverages are in transit have in the possession~~
11 ~~of the driver or operator of the transporting carrier or vehicle the~~
12 ~~invoice, bill of lading, manifest or other document describing such~~
13 ~~alcoholic beverages being transported.~~

14 ~~C.~~ Every manufacturer, wine and spirits wholesaler or beer
15 distributor importing into or purchasing in this state any alcoholic
16 beverage, and any retailer purchasing any alcoholic beverage in this
17 state, shall at the time of delivery or acceptance of such alcoholic
18 beverage, demand and receive a proper bill of lading, invoice,
19 manifest or other document, particularly describing such alcoholic
20 beverage and showing the proof of all spirits.

21 ~~D.~~ C. Every manufacturer, wine and spirits wholesaler, beer
22 distributor, nonresident seller and retailer shall retain one copy
23 of each invoice, bill of lading, manifest or similar document
24 covering all such sales and purchases by such licensee, as a part of

1 the permanent records of such licensee for a period of at least
2 three (3) years.

3 ~~E.~~ D. Any person violating any of the provisions of this
4 section, whether acting for himself or herself or as the agent or
5 employee of any licensee hereunder, shall be guilty of a misdemeanor
6 and, upon conviction, shall be punished as provided by law. Any
7 violation of the provisions of this section shall also constitute
8 grounds for the revocation by the ABLE Commission of any license
9 issued under the Oklahoma Alcoholic Beverage Control Act.

10 SECTION 5. AMENDATORY Section 141, Chapter 366, O.S.L.
11 2016 (37A O.S. Supp. 2017, Section 6-101), is amended to read as
12 follows:

13 Section 6-101. A. No person shall:

14 1. Knowingly sell, deliver or furnish alcoholic beverages to
15 any person under twenty-one (21) years of age;

16 2. Sell, deliver or knowingly furnish alcoholic beverages to an
17 intoxicated person or to any person who has been adjudged insane or
18 mentally deficient;

19 3. Open a retail container or consume alcoholic beverages on
20 the premises of a package store, grocery store, convenience store or
21 drug store, unless otherwise permitted by law;

22 4. Import into this state, except as provided for in the
23 Oklahoma Alcoholic Beverage Control Act, any alcoholic beverages;
24 provided, that nothing herein shall prohibit the importation or

1 possession for personal use of not more than one (1) liter of
2 alcoholic beverages upon which the Oklahoma excise tax is
3 delinquent;

4 5. Receive, possess or use any alcoholic beverage in violation
5 of the provisions of the Oklahoma Alcoholic Beverage Control Act;

6 6. ~~Transport~~ Knowingly transport into, within or through this
7 state more than one (1) liter of alcoholic beverages upon which the
8 Oklahoma excise tax has not been paid unless the person accompanying
9 or in charge of the vehicle transporting same shall possess a true
10 copy of a bill of lading, invoice, manifest or other document
11 particularly identifying ~~the~~ that alcoholic beverages are being
12 transported and showing the name and address of the consignor and
13 consignee; provided, this prohibition shall not apply to the first
14 one hundred eighty (180) liters of alcoholic beverages classified as
15 household goods by military personnel, age twenty-one (21) or older,
16 when entering Oklahoma from temporary active assignment outside the
17 contiguous United States;

18 7. Knowingly transport in any vehicle upon a public highway,
19 street or alley any alcoholic beverage except in the original
20 container which shall not have been opened and the seal upon which
21 shall not have been broken and from which the original cap or cork
22 shall not have been removed, unless the opened container be in the
23 rear trunk or rear compartment, which shall include the spare tire
24 compartment in a vehicle commonly known as a station wagon and panel

1 truck, or any outside compartment which is not accessible to the
2 driver or any other person in the vehicle while it is in motion;

3 8. Consume spirits in public except on the premises of a
4 licensee of the ABLE Commission who is authorized to sell or serve
5 spirits by the individual drink, or be intoxicated in a public
6 place. This provision shall be cumulative and in addition to
7 existing law;

8 9. Forcibly resist lawful arrest, or by physical contact
9 interfere with an investigation of any infringement of the Oklahoma
10 Alcoholic Beverage Control Act or with any lawful search or seizure
11 being made by a law enforcement officer or an employee of the ABLE
12 Commission, when such person knows or should know that such acts are
13 being performed by a state, county or municipal officer or employee
14 of the ABLE Commission;

15 10. Manufacture, duplicate, counterfeit or in any way imitate
16 any bottle club membership card required to be issued by the ABLE
17 Commission without the permission of the ABLE Commission;

18 11. Consume or possess alcoholic beverages on the licensed
19 premises of a bottle club unless such person possesses a valid
20 membership card for that club issued by the club;

21 12. Knowingly possess any bottle club membership card required
22 to be issued by the ABLE Commission which has been manufactured,
23 counterfeited, imitated or in any way duplicated without the
24 permission of the ABLE Commission; or

1 13. Knowingly and willfully permit any individual under twenty-
2 one (21) years of age who is an invitee to the person's residence,
3 any building, structure or room owned, occupied, leased or otherwise
4 procured by the person or on any land owned, occupied, leased or
5 otherwise procured by the person, to possess or consume any
6 alcoholic beverage as defined by Section ~~3~~ 1-103 of this ~~act~~ title,
7 any controlled dangerous substance as defined in the Uniform
8 Controlled Dangerous Substances Act, or any combination thereof, in
9 such place.

10 B. Except as provided for in subsection C of this section,
11 punishment for violation of paragraph 13 of subsection A of this
12 section shall be as follows:

13 1. Any person who is convicted of a violation of the provisions
14 of paragraph 13 of subsection A of this section shall be deemed
15 guilty of a misdemeanor for the first offense and be punished by a
16 fine of not more than Five Hundred Dollars (\$500.00);

17 2. Any person who, within ten (10) years after previous
18 convictions of a violation:

19 a. of paragraph 13 of subsection A of this section,

20 b. of the provisions of any law of another state
21 prohibiting the offense provided for in paragraph 13
22 of subsection A of this section, or

23 c. in a municipal criminal court of record for the
24 violation of a municipal ordinance prohibiting the

1 offense provided for in paragraph 13 of subsection A
2 of this section,
3 shall be guilty of a misdemeanor and shall be punished by a fine of
4 not more than One Thousand Dollars (\$1,000.00);

5 3. Any person who, within ten (10) years after two or more
6 previous convictions of a violation:

7 a. of paragraph 13 of subsection A of this section,

8 b. of the provisions of any law of another state
9 prohibiting the offense provided for in paragraph 13
10 of subsection A of this section, or

11 c. in a municipal criminal court of record for the
12 violation of a municipal ordinance prohibiting the
13 offense provided for in paragraph 13 of subsection A
14 of this section, or

15 d. or any combination of two or more thereof,

16 shall be guilty of a felony and shall be punished by a fine of not
17 more than Two Thousand Five Hundred Dollars (\$2,500.00), or by
18 imprisonment in the custody of the Department of Corrections for not
19 more than five (5) years, or by both such fine and imprisonment.

20 C. Any person who violates paragraph 13 of subsection A of this
21 section, and such actions cause great bodily injury or the death of
22 a person, shall, in addition to any other penalty provided by law,
23 be guilty of a felony, punishable by imprisonment in the custody of
24 the Department of Corrections for not more than five (5) years, a

1 fine of not less than Two Thousand Five Hundred Dollars (\$2,500.00)
2 nor more than Five Thousand Dollars (\$5,000.00), or both such fine
3 and imprisonment.

4 D. Except as provided in subsection C of Section ~~166~~ 6-126 of
5 this ~~act~~ title, any person who shall engage in any of the following
6 and disturb the peace of any person:

7 1. In any public place, or in or upon any passenger coach,
8 streetcar, or in or upon any other vehicle commonly used for the
9 transportation of passengers, or in or about any depot, platform,
10 waiting station or room, drink or otherwise consume any intoxicating
11 liquor unless authorized by ~~this act~~ the Oklahoma Alcoholic Beverage
12 Control Act, intoxicating substance or intoxicating compound of any
13 kind, or inhale glue, paint or other intoxicating substance;

14 2. Be drunk or intoxicated in any public or private road, or in
15 any passenger coach, streetcar or any public place or building, or
16 at any public gathering, from drinking or consuming such
17 intoxicating liquor, intoxicating substance or intoxicating compound
18 or from inhalation of glue, paint or other intoxicating substance;
19 or

20 3. Be drunk or intoxicated from any cause,
21 shall be guilty of a misdemeanor, and upon conviction thereof
22 shall be punished by a fine of not less than Ten Dollars (\$10.00),
23 nor more than One Hundred Dollars (\$100.00) or by imprisonment for
24

1 not less than five (5) days nor more than thirty (30) days or by
2 both such fine and imprisonment.

3 SECTION 6. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 24A.31 of Title 51, unless there
5 is created a duplication in numbering, reads as follows:

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

10 SECTION 7. REPEALER Section 76, Chapter 366, O.S.L.
11 2016, as amended by Section 1, Chapter 360, O.S.L. 2017 (37A O.S.
12 Supp. 2017, Section 3-106), is hereby repealed.

13 SECTION 8. REPEALER Section 126, Chapter 366, O.S.L.
14 2016 (37A O.S. Supp. 2017, Section 5-123), is hereby repealed.

15 SECTION 9. This act shall become effective October 1, 2018.

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17 COMMITTEE REPORT BY: COMMITTEE ON BANKING AND BUSINESS, dated
18 04/03/2018 - DO PASS.
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