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March 1, 2018

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 1537

By: David

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[ alcoholic beverages - self-distribution license and
direct wine shipper's permit - prohibited acts -
Confidential Wine Shipment Reports - repealers -
codification - effective date ]
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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

2. If such a winemaker elects to do so, to sell and deliver its wines directly to licensed retail package stores, mixed beverage

1 licensees, beer and wine licensees, and restaurants in this state in
2 full case lots only, and in accordance with the provisions of the
3 Oklahoma Alcoholic Beverage Control Act and such rules as the ABLE
4 Commission shall promulgate.

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

11 1. Any such winemaker which elects to directly sell its wine to
12 package stores, mixed beverage licensees, beer and wine licensees,
13 and restaurants shall not also use a licensed wholesale distributor
14 as a means of distribution, and shall be required to sell its wines
15 to every package store, mixed beverage licensee, beer and wine
16 licensee, and restaurant licensee who desires to purchase the same,
17 on the same price basis and without discrimination;

18 2. If a winemaker or winery sells directly to a retail package
19 store, mixed beverage licensee, beer and wine licensee or
20 restaurant, the winemaker shall transport the wine from the
21 winemaker's winery to the premises where the wine is to be delivered
22 only in vehicles owned or leased by the winemaker and not by common
23 or private contract carrier and shall obtain all necessary permits
24 as required by the Oklahoma Alcoholic Beverage Control Act; and

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

6 SECTION 2. AMENDATORY Section 69, Chapter 366, O.S.L.
7 2016 (37A O.S. Supp. 2017, Section 2-157), is amended to read as
8 follows:

9 Section 2-157. A. Every winemaker or small farm winery
10 electing to directly sell its wines to retailers, mixed beverage
11 licensees, beer and wine licensees, and restaurants must obtain a
12 winery self-distribution license and pay the applicable license fee
13 and shall register its products and post its prices with the state
14 in the same manner required of the holder of a nonresident seller
15 license.

16 B. Every winemaker or small farm winery electing to directly
17 sell its wines to retailers, mixed beverage licensees, beer and wine
18 licensees, and restaurants shall report all sales to retail package
19 stores, mixed beverage licensees, beer and wine licensees, and
20 restaurants in this state to the ABLE Commission and to the Oklahoma
21 Tax Commission at least monthly, or in accordance with such rules as
22 the ABLE Commission shall promulgate and shall pay to the Tax
23 Commission all excise and other taxes imposed by this state upon
24

1 such wine in the same manner required of the holder of a nonresident
2 seller license.

3 C. Any self-distributing winemaker within or without this state
4 who shall, in any calendar year, exceed the production volume limit
5 provided for in subsection B of Section ~~17~~ 2-105 of this ~~act~~ title,
6 shall immediately notify the ABLE Commission of such fact and shall
7 thereafter have the option to sell the wines they produce to every
8 licensed wholesale distributor who desires to purchase the same, on
9 the same price basis and without discrimination, and shall
10 thereafter be allowed to sell such beverages only to such licensed
11 wholesale distributors or cease to sell its products in this state.

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

15 E. Any licensed winemaker or winery that sells or distributes
16 its wine directly to a retailer, mixed beverage licensee, beer and
17 wine licensee or restaurant in this state after having exceeded the
18 production volume limit provided for in subsection B of Section ~~17~~
19 2-105 of this ~~act~~ title in any calendar year shall be subject to a
20 fine of Ten Thousand Dollars (\$10,000.00). In addition, if the
21 violation is a second or subsequent violation, the winemaker or
22 winery shall not be allowed to transport wine to a retail package
23 store or restaurant for three (3) years from the date of the second
24 or subsequent violation.

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

8 SECTION 3. AMENDATORY Section 76, Chapter 366, O.S.L.
9 2016, as amended by Section 3, Chapter 307, O.S.L. 2017 (37A O.S.
10 Supp. 2017, Section 3-106), is amended to read as follows:

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

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

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

1 2. Payment of a registration fee of Three Hundred Dollars
2 (\$300.00) for original permits and One Hundred Fifty Dollars
3 (\$150.00) for renewal permits; and

4 3. Any other documentation that the ABLE Commission believes is
5 reasonably necessary to verify the identity and physical location of
6 the winery.

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

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

11 2. Shall not ship wine intended for resale;

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

17 4. Shall require the transporter or common carrier that
18 delivers the wine to obtain the signature of a person twenty-one
19 (21) years of age or older at the delivery address at the time of
20 delivery. At the expense of the Direct Wine Shipper, the Direct
21 Wine Shipper shall receive a delivery confirmation from the express
22 company, common carrier or contract carrier indicating the location
23 of delivery, time of delivery and the name and signature of the
24 individual who accepted the delivery. The ABLE Commission shall

1 design and create a label or approve a label that must be affixed to
2 the shipping container by the licensee;

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

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

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

15 ~~8.~~ 7. Shall be deemed to have consented to the jurisdiction of
16 any agency or court of the State of Oklahoma tasked with the
17 enforcement of or adjudication of controversies related to this
18 section and any related laws or rules; and

19 ~~9.~~ 8. Shall require the consumer to verify, by electronic means
20 or otherwise, that the consumer is at least twenty-one (21) years of
21 age.

22 D. ~~No express company, common carrier or contract carrier nor~~
23 ~~any representative, agent or employee on behalf of the same shall~~
24 ~~knowingly deliver any shipping container that contains an alcoholic~~

~~beverage into this state, unless it complies with the provisions of this section. No express company, common carrier or contract carrier nor any representative, agent or employee on behalf of the same shall knowingly deliver any shipping container that is clearly labeled as containing an alcoholic beverage, including but not limited to the lawful shipment of wine under this section, to any person in this state who is under the age of twenty-one (21) at the time of delivery. Any express company, common carrier or contract carrier that carries or transports alcoholic beverages for delivery within this state in violation of this section shall be guilty of a misdemeanor and for the first offense be fined not more than Two Thousand Five Hundred Dollars (\$2,500.00), for a second offense shall be fined not more than Five Thousand Dollars (\$5,000.00) and for a third and subsequent offense be fined not more than Ten Thousand Dollars (\$10,000.00). An express company, common carrier and contract carrier shall be held vicariously liable for the actions of its representatives, agents and employees for actions in violation of this section.~~

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

1 1. The name of the company, carrier, person, firm or
2 corporation making the report;
3 2. The period of time covered by the report;
4 3. The name and business address of the consignor shipping the
5 wine;
6 4. The quantity of alcoholic beverages shipped;
7 6. The unique tracking number of the delivery; and
8 7. The date of delivery.
9 E. The provisions of this section do not apply to a motor
10 carrier or freight forwarder as defined in Section 13102 of Title 49
11 of the United States Code or to an air carrier as defined in Section
12 40102 of Title 49 of the United States Code.

13 SECTION 4. AMENDATORY Section 128, Chapter 366, O.S.L.
14 2016 (37A O.S. Supp. 2017, Section 5-125), is amended to read as
15 follows:

16 Section 5-125. A. Every manufacturer, wine and spirits
17 wholesaler, beer distributor or nonresident seller, selling
18 alcoholic beverages in this state, or selling alcoholic beverages
19 for shipment into this state shall, at the time such sale is made,
20 make and deliver to the purchaser or transporter an invoice, bill of
21 lading, manifest or other document describing such alcoholic
22 beverages, showing:

- 23 1. The date of such sale or delivery;
24 2. The name and ABLE Commission license number of the seller;

1 3. The point of origin of the movement of such alcoholic
2 beverages and the destination of same;

3 4. The kind and quantity and a description of such alcoholic
4 beverages, including the proof of all spirits;

5 5. The name and ABLE Commission license number of the
6 purchaser;

7 6. The sale price; and

8 7. Such other information as the Oklahoma Tax Commission may,
9 by form or rule, require.

10 Every such invoice, bill of lading, manifest or other document
11 describing such alcoholic beverages, except beer, must be identified
12 by consecutive numbers printed upon the invoice or document, and
13 each such seller and purchaser must account for each copy of his or
14 her invoice and each number thereof.

15 B. Every common carrier and private carrier, and every person
16 who knowingly transports ~~any~~ alcoholic beverages from any point
17 within this state to any other point within or without this state,
18 or who transports alcoholic beverages into this state, shall at all
19 times while such alcoholic beverages are in transit have in the
20 possession of the driver or operator of the transporting carrier or
21 vehicle the invoice, bill of lading, manifest or other document
22 ~~describing such~~ identifying that alcoholic beverages are being
23 transported.
24

1 C. Every manufacturer, wine and spirits wholesaler or beer
2 distributor importing into or purchasing in this state any alcoholic
3 beverage, and any retailer purchasing any alcoholic beverage in this
4 state, shall at the time of delivery or acceptance of such alcoholic
5 beverage, demand and receive a proper bill of lading, invoice,
6 manifest or other document, particularly describing such alcoholic
7 beverage and showing the proof of all spirits.

8 D. Every manufacturer, wine and spirits wholesaler, beer
9 distributor, nonresident seller and retailer shall retain one copy
10 of each invoice, bill of lading, manifest or similar document
11 covering all such sales and purchases by such licensee, as a part of
12 the permanent records of such licensee for a period of at least
13 three (3) years.

14 E. Any person violating any of the provisions of this section,
15 whether acting for himself or herself or as the agent or employee of
16 any licensee hereunder, shall be guilty of a misdemeanor and, upon
17 conviction, shall be punished as provided by law. Any violation of
18 the provisions of this section shall also constitute grounds for the
19 revocation by the ABLE Commission of any license issued under the
20 Oklahoma Alcoholic Beverage Control Act.

21 SECTION 5. AMENDATORY Section 141, Chapter 366, O.S.L.
22 2016 (37A O.S. Supp. 2017, Section 6-101), is amended to read as
23 follows:

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

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

3 2. Sell, deliver or knowingly furnish alcoholic beverages to an
4 intoxicated person or to any person who has been adjudged insane or
5 mentally deficient;

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

9 4. Import into this state, except as provided for in the
10 Oklahoma Alcoholic Beverage Control Act, any alcoholic beverages;
11 provided, that nothing herein shall prohibit the importation or
12 possession for personal use of not more than one (1) liter of
13 alcoholic beverages upon which the Oklahoma excise tax is
14 delinquent;

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

17 6. ~~Transport~~ Knowingly transport into, within or through this
18 state more than one (1) liter of alcoholic beverages upon which the
19 Oklahoma excise tax has not been paid unless the person accompanying
20 or in charge of the vehicle transporting same shall possess a true
21 copy of a bill of lading, invoice, manifest or other document
22 particularly identifying ~~the~~ that alcoholic beverages are being
23 transported and showing the name and address of the consignor and
24 consignee; provided, this prohibition shall not apply to the first

1 one hundred eighty (180) liters of alcoholic beverages classified as
2 household goods by military personnel, age twenty-one (21) or older,
3 when entering Oklahoma from temporary active assignment outside the
4 contiguous United States;

5 7. Knowingly transport in any vehicle upon a public highway,
6 street or alley any alcoholic beverage except in the original
7 container which shall not have been opened and the seal upon which
8 shall not have been broken and from which the original cap or cork
9 shall not have been removed, unless the opened container be in the
10 rear trunk or rear compartment, which shall include the spare tire
11 compartment in a vehicle commonly known as a station wagon and panel
12 truck, or any outside compartment which is not accessible to the
13 driver or any other person in the vehicle while it is in motion;

14 8. Consume spirits in public except on the premises of a
15 licensee of the ABLE Commission who is authorized to sell or serve
16 spirits by the individual drink, or be intoxicated in a public
17 place. This provision shall be cumulative and in addition to
18 existing law;

19 9. Forcibly resist lawful arrest, or by physical contact
20 interfere with an investigation of any infringement of the Oklahoma
21 Alcoholic Beverage Control Act or with any lawful search or seizure
22 being made by a law enforcement officer or an employee of the ABLE
23 Commission, when such person knows or should know that such acts are
24

1 being performed by a state, county or municipal officer or employee
2 of the ABLE Commission;

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

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

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

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

22 B. Except as provided for in subsection C of this section,
23 punishment for violation of paragraph 13 of subsection A of this
24 section shall be as follows:

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

5 2. Any person who, within ten (10) years after previous
6 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,

15 shall be guilty of a misdemeanor and shall be punished by a fine of
16 not more than One Thousand Dollars (\$1,000.00);

17 3. Any person who, within ten (10) years after two or more
18 previous 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, or

3 d. or any combination of two or more thereof,
4 shall be guilty of a felony and shall be punished by a fine of not
5 more than Two Thousand Five Hundred Dollars (\$2,500.00), or by
6 imprisonment in the custody of the Department of Corrections for not
7 more than five (5) years, or by both such fine and imprisonment.

8 C. Any person who violates paragraph 13 of subsection A of this
9 section, and such actions cause great bodily injury or the death of
10 a person, shall, in addition to any other penalty provided by law,
11 be guilty of a felony, punishable by imprisonment in the custody of
12 the Department of Corrections for not more than five (5) years, a
13 fine of not less than Two Thousand Five Hundred Dollars (\$2,500.00)
14 nor more than Five Thousand Dollars (\$5,000.00), or both such fine
15 and imprisonment.

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

19 1. In any public place, or in or upon any passenger coach,
20 streetcar, or in or upon any other vehicle commonly used for the
21 transportation of passengers, or in or about any depot, platform,
22 waiting station or room, drink or otherwise consume any intoxicating
23 liquor unless authorized by ~~this act~~ the Oklahoma Alcoholic Beverage
24

1 Control Act, intoxicating substance or intoxicating compound of any
2 kind, or inhale glue, paint or other intoxicating substance;

3 2. Be drunk or intoxicated in any public or private road, or in
4 any passenger coach, streetcar or any public place or building, or
5 at any public gathering, from drinking or consuming such
6 intoxicating liquor, intoxicating substance or intoxicating compound
7 or from inhalation of glue, paint or other intoxicating substance;
8 or

9 3. Be drunk or intoxicated from any cause,
10 shall be guilty of a misdemeanor, and upon conviction thereof
11 shall be punished by a fine of not less than Ten Dollars (\$10.00),
12 nor more than One Hundred Dollars (\$100.00) or by imprisonment for
13 not less than five (5) days nor more than thirty (30) days or by
14 both such fine and imprisonment.

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

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

22 SECTION 7. REPEALER Section 76, Chapter 366, O.S.L.
23 2016, as amended by Section 1, Chapter 360, O.S.L. 2017 (37A O.S.
24 Supp. 2017, Section 3-106), is hereby repealed.

1 SECTION 8. REPEALER Section 126, Chapter 366, O.S.L.
2 2016 (37A O.S. Supp. 2017, Section 5-123), is hereby repealed.

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

4 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
5 March 1, 2018 - DO PASS AS AMENDED

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