

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1537

By: David

6 AS INTRODUCED

7 An Act relating to alcoholic beverages; amending
8 Section 76, Chapter 366, O.S.L. 2016, as amended by
9 Section 1, Chapter 360, O.S.L. 2017 (37A O.S. Supp.
10 2017, Section 3-106), which relate to direct wine
11 shipper's permit; removing certain permit for certain
12 wine shipment; deleting certain rule requirement;
13 deleting certain prohibition to shipments; modifying
14 contents of report; exempting certain carriers
15 defined under the United States Code; amending
16 Section 128, Chapter 366, O.S.L. 2016 (37A O.S. Supp.
17 2017, Section 5-125), which relates to information
18 required for delivery of alcoholic beverages;
19 modifying information required; amending Section 141,
20 Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2017,
21 Section 6-101), which relates to prohibited acts;
22 clarifying language; repealing Section 126, Chapter
23 366, O.S.L. 2016 (37A O.S. Supp. 2017, Section 5-
24 123), which relates to shippers of alcoholic
beverages other than manufacturers and distributors;
and providing an effective date.

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

20 SECTION 1. AMENDATORY Section 76, Chapter 366, O.S.L.
21 2016, as amended by Section 1, Chapter 360, O.S.L. 2017 (37A O.S.
22 Supp. 2017, Section 3-106), is amended to read as follows:

23 Section 3-106. A. A Direct Wine Shipper's Permit may be issued
24 by the Oklahoma ABLE Commission to a winery licensed in this or any

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

8 B. ~~A Direct Wine Consumer's Permit may be issued by the ABLE~~
9 ~~Commission to a resident who is twenty-one (21) years of age or~~
10 ~~older and wishes to purchase wine directly from a winery pursuant to~~
11 ~~this section.~~

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

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

17 2. Payment of a registration fee of Three Hundred Dollars
18 (\$300.00) for original permits and One Hundred Fifty Dollars
19 (\$150.00) for renewal permits; and

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

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

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

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

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

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

14 2. Shall not ship wine intended for resale;

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

20 4. Shall require the transporter or common carrier that
21 delivers the wine to obtain the signature of a person twenty-one
22 (21) years of age or older at the delivery address at the time of
23 delivery. At the expense of the Direct Wine Shipper, the Direct
24 Wine Shipper shall receive a delivery confirmation from the express

1 company, common carrier or contract carrier indicating the location
2 of delivery, time of delivery and the name and signature of the
3 individual who accepted the delivery. The ABLE Commission shall
4 design and create a label or approve a label that must be affixed to
5 the shipping container by the licensee;

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

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

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

20 ~~F. No express company, common carrier or contract carrier nor~~
21 ~~any representative, agent or employee on behalf of the same shall~~
22 ~~knowingly deliver any shipping container that contains an alcoholic~~
23 ~~beverage into this state, unless it complies with the provisions of~~
24 ~~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.~~

~~G.~~ D. 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 of known wine shipments containing:

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

2. The period of time covered by the report;

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

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

~~5. The quantity of alcoholic beverages delivered to each consignee shipped;~~

~~6.~~ 5. The unique tracking number of the delivery; and

1 ~~7.~~ 6. The date of delivery.

2 E. The provisions of this section do not apply to a motor
3 carrier or freight forwarder as defined in Section 13102 of Title 49
4 of the United States Code or to an air carrier as defined in Section
5 40102 of Title 49 of the United States Code.

6 SECTION 2. AMENDATORY Section 128, Chapter 366, O.S.L.
7 2016 (37A O.S. Supp. 2017, Section 5-125), is amended to read as
8 follows:

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

16 1. The date of such sale or delivery;

17 2. The name and ABLE Commission license number of the seller;

18 3. The point of origin of the movement of such alcoholic
19 beverages and the destination of same;

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

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

24 6. The sale price; and

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

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

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

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

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

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

14 SECTION 3. AMENDATORY Section 141, Chapter 366, O.S.L.
15 2016 (37A O.S. Supp. 2017, Section 6-101), is amended to read as
16 follows:

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

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

20 2. Sell, deliver or knowingly furnish alcoholic beverages to an
21 intoxicated person or to any person who has been adjudged insane or
22 mentally deficient;

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

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

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

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

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

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

15 9. Forcibly resist lawful arrest, or by physical contact
16 interfere with an investigation of any infringement of the Oklahoma
17 Alcoholic Beverage Control Act or with any lawful search or seizure
18 being made by a law enforcement officer or an employee of the ABLE
19 Commission, when such person knows or should know that such acts are
20 being performed by a state, county or municipal officer or employee
21 of the ABLE Commission;

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

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

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

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

16 B. Except as provided for in subsection C of this section,
17 punishment for violation of paragraph 13 of subsection A of this
18 section shall be as follows:

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

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

- a. of paragraph 13 of subsection A of this section,
- b. of the provisions of any law of another state prohibiting the offense provided for in paragraph 13 of subsection A of this section, or
- c. in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in paragraph 13 of subsection A of this section,

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

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

- a. of paragraph 13 of subsection A of this section,
- b. of the provisions of any law of another state prohibiting the offense provided for in paragraph 13 of subsection A of this section, or
- c. in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in paragraph 13 of subsection A of this section, or
- d. or any combination of two or more thereof,

shall be guilty of a felony and shall be punished by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00), or by

1 imprisonment in the custody of the Department of Corrections for not
2 more than five (5) years, or by both such fine and imprisonment.

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

11 D. Except as provided in subsection C of Section 166 of this
12 act, any person who shall engage in any of the following and disturb
13 the peace of any person:

14 1. In any public place, or in or upon any passenger coach,
15 streetcar, or in or upon any other vehicle commonly used for the
16 transportation of passengers, or in or about any depot, platform,
17 waiting station or room, drink or otherwise consume any intoxicating
18 liquor unless authorized by this act, intoxicating substance or
19 intoxicating compound of any kind, or inhale glue, paint or other
20 intoxicating substance;

21 2. Be drunk or intoxicated in any public or private road, or in
22 any passenger coach, streetcar or any public place or building, or
23 at any public gathering, from drinking or consuming such
24 intoxicating liquor, intoxicating substance or intoxicating compound

1 or from inhalation of glue, paint or other intoxicating substance;
2 or

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

9 SECTION 4. REPEALER Section 126, Chapter 366, O.S.L.
10 2016 (37A O.S. Supp. 2017, Section 5-123), is hereby repealed.

11 SECTION 5. This act shall become effective October 1, 2018.

12

13 56-2-2839 NP 1/18/2018 7:16:41 PM

14

15

16

17

18

19

20

21

22

23

24