

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

HOUSE BILL 1540

By: Virgin

AS INTRODUCED

An Act relating to alcoholic beverages; amending Section 16, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 2-104), which relates to winemaker licenses; authorizing certain sales of wine by licensee; amending Section 76, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 3-106), which relates to direct wine shipping permits; eliminating the Direct Wine Consumer's Permit; eliminating certain application criteria; eliminating certain rulemaking authority; eliminating certain labeling requirement; and providing an effective date.

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

SECTION 1. AMENDATORY Section 16, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 2-104), is amended to read as follows:

Section 2-104. A winemaker license shall authorize the holder thereof:

1. To manufacture (including such mixing, blending and cellar treatment as authorized by federal law), bottle, package and store on licensed premises wine containing not more than twenty-four percent (24%) alcohol by volume, provided the bottle or package

1 sizes authorized shall be limited to the capacities approved by the
2 United States Alcohol and Tobacco Tax and Trade Bureau;

3 2. To sell wine in this state to licensed wholesalers and
4 manufacturers;

5 3. To sell ~~bottles of~~ wine produced at the winery from grapes
6 and other fruits and berries grown in this state, if available, for
7 either on-premises or off-premises consumption to consumers on the
8 premises of the winery;

9 4. To serve free samples of wine produced at the winery to
10 visitors twenty-one (21) years of age and older. For purposes of
11 this section, no visitor may sample more than a total of six (6)
12 fluid ounces of wine per day. The winery shall restrict the
13 distribution and consumption of wine samples to an area within the
14 licensed premises designated by the winery. A current floor plan
15 that includes the designated sampling area shall be on file with the
16 ABLE Commission. No visitor under twenty-one (21) years of age
17 shall be permitted to enter the designated sampling area when
18 samples are being distributed and consumed. Samples of wine served
19 by a winery under this section shall not be considered a sale of
20 wine within the meaning of Article XXVIII A of the Oklahoma
21 Constitution or Section ~~3~~ 1-103 of this ~~act~~ title; provided, such
22 samples of wine shall be considered removed or withdrawn from the
23 winery for use or consumption within the meaning of Section ~~113~~ 5-
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1 110 of this ~~act~~ title for excise tax determination and reporting
2 requirements;

3 5. To serve samples of wine produced at the winery at public
4 events such as festivals and trade shows;

5 6. To sell wine produced at the winery, in original sealed
6 containers, at public events such as festivals and trade shows;

7 7. To sell wine out of this state to qualified persons; and

8 8. To purchase from licensed winemakers, distillers and
9 rectifiers in this state, and to import into this state wine, brandy
10 and fruit spirits for use in manufacturing in accordance with
11 federal laws and regulations.

12 SECTION 2. AMENDATORY Section 76, Chapter 366, O.S.L.
13 2016 (37A O.S. Supp. 2016, Section 3-106), is amended to read as
14 follows:

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

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

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

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

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

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

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

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

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

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

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

5 2. Shall not ship wine intended for resale;

6 3. Shall ensure that all containers of wine shipped directly to
7 a resident in this state ~~include the Direct Wine Consumer's Permit~~
8 ~~Number issued by the ABLE Commission~~ and are conspicuously labeled
9 with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR
10 OLDER REQUIRED FOR DELIVERY.";

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

21 5. Shall not ship wine otherwise available in Oklahoma;

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

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

8 8. Shall be deemed to have consented to the jurisdiction of any
9 agency or court of the State of Oklahoma tasked with the enforcement
10 of or adjudication of controversies related to this section and any
11 related laws or rules.

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

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

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

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