

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1642

By: **Echols**

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to alcoholic beverages; amending
10 Section 19, Chapter 366, O.S.L. 2016, as amended by
11 Section 11, Chapter 364, O.S.L. 2017 (37A O.S. Supp.
12 2018, Section 2-107), which relates to the wine and
13 spirits wholesaler license; clarifying from whom wine
14 or spirits wholesaler licensees may purchase or
15 import; requiring certain licensees to collect and
16 remit excise taxes on certain imports; expanding
17 exception to certain restrictions on the sales of
18 spirits and wine between wholesalers; amending
19 Section 69, Chapter 366, O.S.L. 2016, as amended by
20 Section 2, Chapter 113, O.S.L. 2018 (37A O.S. Supp.
21 2018, Section 2-157), which relates to winery self-
22 distribution; modifying the manner in which taxes are
23 paid; amending Section 104, Chapter 366, O.S.L. 2016,
24 as amended by Section 13, Chapter 205, O.S.L. 2017
 (37A O.S. Supp. 2018, Section 5-101), which relates
 to excise tax on alcoholic beverages; modifying the
 manner in which excise tax is paid and by whom;
 amending Section 127, Chapter 366, O.S.L. 2016 (37A
 O.S. Supp. 2018, Section 5-124), which relates to a
 certain required bond; modifying the applicability of
 a certain bond requirement; specifying who is
 affected by bond requirement; and providing an
 effective date.

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

SECTION 1. AMENDATORY Section 19, Chapter 366, O.S.L.

2016, as amended by Section 11, Chapter 364, O.S.L. 2017 (37A O.S. Supp. 2018, Section 2-107), is amended to read as follows:

Section 2-107. A. A wine and spirits wholesaler license shall authorize the holder thereof:

1. To purchase and import into this state spirits and wines from persons authorized to sell same who are the holders of a designating manufacturer license, nondesignating manufacturer license or nonresident seller license, and their agents who are the holders of manufacturer's agent licenses; provided, it shall be unlawful for any wholesaler to purchase any alcoholic beverage for resale unless those alcoholic beverages are purchased from the primary American source of supply for the brand of alcoholic beverages sought to be resold;

2. To purchase spirits and wines from licensed distillers, rectifiers and winemakers in this state;

3. To purchase spirits and wines from licensed wholesalers, to the extent set forth in subsections B and C of this section;

4. To sell in retail containers in this state to retailers, mixed beverage, caterer, special event, public event, hotel beverage or airline/railroad beverage licensees, spirits and wines which have been received and unloaded at the bonded warehouse facilities of the wholesaler before such sale; provided, it shall be unlawful for any wholesaler to sell any alcoholic beverages if the alcoholic

1 beverages have not been purchased by the wholesaler from the primary
2 American source of supply;

3 5. To sell to licensed wholesalers, to the extent set forth in
4 subsections B and C of this section, spirits and wines which have
5 been received and unloaded at the bonded warehouse facilities of the
6 wholesaler before such sale; ~~and~~

7 6. To sell spirits and wines out of this state to qualified
8 persons; and

9 7. To collect and remit excise taxes on all alcoholic beverages
10 it has transported into the state.

11 Provided, however, sales of spirits and wine in containers with
12 a capacity of less than one-twentieth (1/20) gallon by a holder of a
13 wholesaler license shall be in full case lots and in the original
14 unbroken case. Wholesalers shall be authorized to place such signs
15 outside their place of business as are required by Acts of Congress
16 and by such laws and regulations promulgated under such Acts.

17 B. A wholesaler may sell spirits and wine to other wholesalers
18 or purchase spirits and wines from other wholesalers without
19 complying with subsection A of this section in the case of the sale,
20 purchase or other transfer or acquisition of a particular brand of
21 wine or spirits or the entire business of a wholesaler, including
22 the inventory of spirits and wine.

23 C. A wholesaler license shall authorize the holder thereof to:
24

1 1. Maintain not more than three (3) self-owned or leased and
2 self-operated bonded warehouses within this state. All invoices
3 shall be stored at the principal place of business for which the
4 wholesaler license was granted; and

5 2. Accept as payment cash, personal check, cashier's check,
6 money order or electronic fund transfer from persons licensed to
7 purchase alcoholic beverages; provided, a wholesaler shall not be
8 permitted to accept payment by credit card.

9 SECTION 2. AMENDATORY Section 69, Chapter 366, O.S.L.
10 2016, as amended by Section 2, Chapter 113, O.S.L. 2018 (37A O.S.
11 Supp. 2018, Section 2-157), is amended to read as follows:

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

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

1 the ABLE Commission shall promulgate and shall pay to the Tax
2 Commission all excise and other taxes imposed by this state upon
3 such wine in the same manner required of the holder of a ~~nonresident~~
4 ~~seller~~ wine and spirits wholesaler license.

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

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

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

1 for three (3) years from the date of the second or subsequent
2 violation.

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

10 SECTION 3. AMENDATORY Section 104, Chapter 366, O.S.L.
11 2016, as amended by Section 13, Chapter 205, O.S.L. 2017 (37A O.S.
12 Supp. 2018, Section 5-101), is amended to read as follows:

13 Section 5-101. A. Except as provided in this subsection, an
14 excise tax is hereby levied and imposed upon all alcoholic beverages
15 imported or manufactured, for sale, use or distribution, or used or
16 possessed in this state at the following rates:

17 1. One Dollar and forty-seven cents (\$1.47) per liter, and a
18 proportionate rate on fractions thereof, on each liter of spirits;

19 2. Nineteen cents (\$0.19) per liter, and a proportionate rate
20 on fractions thereof, on each liter of wine;

21 3. Fifty-five cents (\$0.55) per liter, and a proportionate rate
22 on fractions thereof, on each liter of sparkling wine; and

23 4. Twelve Dollars and fifty cents (\$12.50) per barrel (thirty-
24 one (31) wine gallons) and a proportionate rate on portions thereof,

1 on each barrel of beer; provided, beer manufactured in this state
2 for export shall not be taxed.

3 B. The excise tax levied on alcoholic beverages except beer
4 under subsection A of this section shall be paid as follows:

5 1. Payment of the excise tax levied by this section with
6 respect to all alcoholic beverages, other than beer, shall be made
7 ~~by the person shipping the same into Oklahoma, or in the case of~~
8 ~~direct imports from foreign countries by the importer, or in the~~
9 ~~case of alcoholic beverages manufactured in Oklahoma by the first~~
10 ~~seller thereof~~ as follows:

11 a. the excise tax on all wine and spirits shall be
12 collected and remitted by the Oklahoma wine and
13 spirits wholesaler who purchases the alcoholic
14 beverages for sale within the state, unless otherwise
15 provided by subparagraph b of this paragraph, and

16 b. the excise tax on all wine shipped directly to a
17 consumer by a winery maintaining a winemaker self-
18 distribution license pursuant to Section 2-105 of this
19 title or a winery maintaining a Direct Wine Shipper's
20 Permit pursuant to Section 3-106 of this title shall
21 be collected and remitted by the winery maintaining
22 this license or permit; and

23 2. The due and payable excise tax levied by this section shall
24 be remitted electronically simultaneously with tax returns

1 electronically filed with the Oklahoma Tax Commission using
2 procedures prescribed by the Tax Commission. The tax returns shall
3 be made under oath by the person liable for the tax on forms
4 prescribed and provided by the Tax Commission and shall be
5 accompanied by payment of the taxes due and any additional sums due
6 as provided by this section. Invoices describing all alcoholic
7 beverages as described in this section which are shipped into this
8 state or which are first sold in this state shall be delivered to
9 the Tax Commission immediately following shipment of liquors into
10 the state or delivery to the first purchaser. Tax returns and
11 payment of excise tax and other sums due shall be electronically
12 filed with the Tax Commission no later than the twentieth day of the
13 month immediately succeeding the month of shipment, importation or
14 first sale of the alcoholic beverages as provided in paragraph 1 of
15 this subsection.

16 C. For the purpose of collecting and remitting the excise tax
17 imposed under this section, the person liable for such tax is hereby
18 declared to be the agent of the state for such purposes.

19 D. Nothing herein shall be construed to impose an additional
20 excise tax on alcoholic beverages held in inventory by wholesalers
21 and retailers upon which the excise tax was paid prior to the
22 effective date of any excise tax increase.

23 E. The retail sale of alcoholic beverages shall be subject to
24 the sales tax statutes enacted by the Legislature.

1 SECTION 4. AMENDATORY Section 127, Chapter 366, O.S.L.

2 2016 (37A O.S. Supp. 2018, Section 5-124), is amended to read as
3 follows:

4 Section 5-124. A. Every manufacturer, importer, broker or
5 other who sells alcoholic beverages to a wine and spirits
6 wholesaler, or beer distributor in Oklahoma, after having been
7 issued a license by the ABLE Commission, shall, before
8 manufacturing, purchasing or selling any alcoholic beverage within
9 this state, ensure that every wine and spirits wholesaler or beer
10 distributor that is responsible for collecting and remitting alcohol
11 excise taxes on behalf of the manufacturer, importer or broker has
12 on file with the Oklahoma Tax Commission a bond issued by a surety
13 company authorized to transact business in this state, in such
14 amount as the Tax Commission may fix, but which shall be at least
15 equal to the estimated amount of the tax liability of such licensee
16 for a three-month period, to secure the payment of all excise taxes
17 due from sales of alcoholic beverages to a wholesaler, or beer
18 distributor, under the provisions of the Oklahoma Alcoholic Beverage
19 Control Act. Provided, the amount of the bond for every wholesaler
20 or beer distributor shall be not less than One Thousand Dollars
21 (\$1,000.00). Such bonds shall be payable to the State of Oklahoma
22 and conditioned upon compliance with the excise tax provisions of
23 the Oklahoma Alcoholic Beverage Control Act and the rules of the Tax
24 Commission relating thereto.

1 B. Every winery maintaining a winemaker self-distribution
2 license pursuant to Section 2-105 of this title or a winery
3 maintaining a Direct Wine Shipper's Permit pursuant to Section 3-106
4 of this title shall be responsible for posting its own bond
5 consistent with the provisions set forth in subsection A of this
6 section.

7 C. In lieu of such surety bond, any such manufacturer, wine and
8 spirits wholesaler, or beer distributor, may deposit cash or
9 negotiable securities, approved by the Tax Commission, in such
10 amount as it may prescribe.

11 SECTION 5. This act shall become effective November 1, 2019.

12
13 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated
14 03/04/2019 - DO PASS, As Amended and Coauthored.