

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

HOUSE BILL 2684

By: Echols

AS INTRODUCED

An Act relating to alcoholic beverages; amending Section 19, Chapter 366, O.S.L. 2016, as amended by Section 11, Chapter 364, O.S.L. 2017 (37A O.S. Supp. 2020, Section 2-107), which relates to the wine and spirits wholesaler license; clarifying from whom wine or spirits wholesaler licensees may purchase or import; requiring certain licensees to collect and remit excise taxes on certain imports; expanding exception to certain restrictions on the sales of spirits and wine between wholesalers; amending Section 69, Chapter 366, O.S.L. 2016, as amended by Section 2, Chapter 113, O.S.L. 2018 (37A O.S. Supp. 2020, Section 2-157), which relates to winery self-distribution; modifying the manner in which taxes are paid; amending Section 104, Chapter 366, O.S.L. 2016, as amended by Section 13, Chapter 205, O.S.L. 2017 (37A O.S. Supp. 2020, 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. 2019 (37A O.S. Supp. 2020, 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. 2020, Section 2-107), is amended to read as follows:

Section 2-107. 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 beverages have not been purchased by the wholesaler from the primary American source of supply;

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

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

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

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

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

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

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

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

7 SECTION 2. AMENDATORY Section 69, Chapter 366, O.S.L.  
8 2016, as amended by Section 2, Chapter 113, O.S.L. 2018 (37A O.S.  
9 Supp. 2020, Section 2-157), is amended to read as follows:

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

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

1 such wine in the same manner required of the holder of a ~~nonresident~~  
2 ~~seller~~ wine and spirits wholesaler 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 2-105 of this title, shall  
6 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 2-  
19 105 of this title in any calendar year shall be subject to a fine of  
20 Ten Thousand Dollars (\$10,000.00). In addition, if the violation is  
21 a second or subsequent violation, the winemaker or winery shall not  
22 be allowed to transport wine to a retail package store or restaurant  
23 for three (3) years from the date of the second or subsequent  
24 violation.

1 F. If Section 2 of Article ~~XXVIII~~ XXVIII-A of the Oklahoma  
2 Constitution 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 104, Chapter 366, O.S.L.  
9 2016, as amended by Section 13, Chapter 205, O.S.L. 2017 (37A O.S.  
10 Supp. 2020, Section 5-101), is amended to read as follows:

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

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

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

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

21 4. Twelve Dollars and fifty cents (\$12.50) per barrel (thirty-  
22 one (31) wine gallons) and a proportionate rate on portions thereof,  
23 on each barrel of beer; provided, beer manufactured in this state  
24 for export shall not be taxed.

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

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

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

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

21 2. The due and payable excise tax levied by this section shall  
22 be remitted electronically simultaneously with tax returns  
23 electronically filed with the Oklahoma Tax Commission using  
24 procedures prescribed by the Tax Commission. The tax returns shall

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

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

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

21 E. The retail sale of alcoholic beverages shall be subject to  
22 the sales tax statutes enacted by the Legislature.  
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1       SECTION 4.       AMENDATORY       Section 127, Chapter 366, O.S.L.  
2       2016, as amended by Section 31, Chapter 322, O.S.L. 2019 (37A O.S.  
3       Supp. 2020, Section 5-124), is amended to read as follows:

4       Section 5-124. A. Every manufacturer, brewer, importer, broker  
5       or 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 winemaking 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, brewer,  
8 wine and spirits wholesaler, or beer distributor, may deposit cash  
9 or 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, 2021.

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