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February 27, 2023

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 796

By: Coleman

An Act relating to alcoholic beverages; amending 37A O.S. 2021, Section 3-106, which relates to Direct Wine Shipper's Permit; modifying requirements for certain reports; providing information to be reported; prohibiting shipment of wine to consumers without a permit; providing penalties; providing certain shippers have consented to certain state agency and court jurisdiction; prohibiting certain acts; providing penalties; requiring notice to carriers of shipments that are unlawful; requiring inspection and auditing of records; updating statutory language; and providing an effective date.

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

SECTION 1. AMENDATORY 37A O.S. 2021, Section 3-106, is amended to read as follows:

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

1 more than thirty nine-liter cases of wine per year under the
2 provisions of this section.

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

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

8 2. Payment of a registration fee of Three Hundred Dollars
9 (\$300.00) for original permits and One Hundred Fifty Dollars
10 (\$150.00) for renewal permits; and

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

14 C. With regard to direct wine shipments permitted by this
15 section, Direct Wine ~~Shipper permit~~ Shipper's Permit holders:

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

18 2. Shall not ship wine intended for resale;

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

1 4. Shall require the transporter or common carrier that
2 delivers the wine to obtain the signature of a person twenty-one
3 (21) years of age or older at the delivery address at the time of
4 delivery. At the expense of the Direct Wine Shipper, the Direct
5 Wine Shipper shall receive a delivery confirmation from the express
6 company, common carrier or contract carrier indicating the location
7 of delivery and the name and signature of the individual who
8 accepted the delivery. The ABLE Commission shall design and create
9 a label or approve a label that must be affixed to the shipping
10 container by the licensee;

11 5. Shall report to the ABLE Commission ~~annually, by a method~~
12 ~~prescribed by the ABLE Commission, the total amount of wine shipped~~
13 ~~into the state the preceding calendar year~~ quarterly the following
14 information:

- 15 a. the name and address of the Oklahoma resident who
16 placed the order,
- 17 b. for each completed shipment, evidence of signature by
18 an individual twenty-one (21) years of age or older,
- 19 c. the name and license number of the common or permit
20 carrier engaged in the shipment,
- 21 d. for each shipment by a fulfillment center on behalf of
22 the Direct Wine Shipper, the name and license number
23 of the fulfillment center engaged in the shipment,
- 24 e. the date of the shipment,

1 f. the carrier tracking number, and

2 g. the quantity of wine in the shipment;

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

10 7. Shall be deemed to have consented to the jurisdiction of any
11 agency or court of ~~the State of Oklahoma~~ this state tasked with the
12 enforcement of or adjudication of controversies related to this
13 section and any related laws or rules; and

14 8. Shall require the consumer to verify, by electronic means or
15 otherwise, that the consumer is at least twenty-one (21) years of
16 age.

17 D. Shipments of wine to consumers in this state from persons
18 who do not possess a current Direct Wine Shipper's Permit pursuant
19 to this section are prohibited. Any person in violation of this
20 section is guilty of a misdemeanor and subject to a civil penalty
21 and a fine not more than:

22 1. One Thousand Five Hundred Dollars (\$1,500.00), for the first
23 offense;

1 2. Two Thousand Five Hundred Dollars (\$2,500.00), for the
2 second offense; and

3 3. Five Thousand Dollars (\$5,000.00), for the third and
4 subsequent offenses.

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

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

14 2. The period of time covered by the report;

15 3. The name, direct shipping permit number, and business
16 address of the consignor shipping the wine;

17 4. The weight of the packages shipped;

18 5. The unique tracking number of the delivery; and

19 6. The date of delivery.

20 ~~E.~~ F. A common carrier shall not deliver a shipment of wine
21 pursuant to this section to any person in this state unless the
22 carrier has verified the validity of the Direct Wine Shipper's
23 Permit prior to accepting shipment. A carrier may consider a Direct
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1 Wine Shipper's Permit to be valid for the remainder of the stated
2 license period unless notified otherwise by the ABLE Commission.

3 G. Every express company, common carrier, contract carrier, and
4 every firm or corporation that shall bring, carry, or transport wine
5 for delivery to any person in this state, except wine and spirits
6 wholesalers or beer distributors, shall be deemed to have consented
7 to the jurisdiction of any agency or court of this state tasked with
8 the enforcement of or adjudication of controversies related to this
9 section and any related laws or rules.

10 H. No express company, common carrier, or contract carrier nor
11 any representative, agent, or employee on behalf of an express
12 company, common carrier, or contract carrier shall:

13 1. Knowingly deliver any shipping container that contains an
14 alcoholic beverage into this state, unless it complies with the
15 provisions of this section; or

16 2. Knowingly deliver any shipping container that is clearly
17 labeled as containing an alcoholic beverage including, but not
18 limited to, the lawful shipment of wine under this section, to any
19 person in this state who is under twenty-one (21) years of age at
20 the time of delivery.

21 I. Any express company, common carrier, or contract carrier
22 that carries or transports alcoholic beverages for delivery within
23 this state that violates this section shall be fined not more than:
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1 1. One Thousand Five Hundred Dollars (\$1,500.00), for the first
2 offense;

3 2. Two Thousand Five Hundred Dollars (\$2,500.00), for the
4 second offense; and

5 3. Five Thousand Dollars (\$5,000.00), for the third and
6 subsequent offenses.

7 An express company, common carrier, and contract carrier may be
8 held vicariously liable for the action of its representatives,
9 agents, and employees for actions in violation of this section.

10 J. The Commission shall notify common carriers of all shipments
11 it has good cause to believe were made unlawfully into this state
12 whether those made through a licensed shipper, fulfillment
13 providers, or an unlicensed entity. The Commission may prohibit a
14 carrier from transporting alcohol on behalf of a cosigner identified
15 as having made an unlawful shipment beginning fifteen (15) days from
16 the date of the notice. A common carrier may request, and the
17 Commission may provide, a hearing to show good cause for the
18 continued shipping by the cosigner.

19 K. The Commission shall inspect and audit the records of both
20 the Direct Wine Shipper's Permit holder, as well as the common
21 carrier and enforce accordingly.

22 L. The provisions of this section do not apply to a motor
23 carrier or freight forwarder as defined in Section 13102 of Title 49
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1 of the United States Code or to an air carrier as defined in Section
2 40102 of Title 49 of the United States Code.

3 SECTION 2. This act shall become effective November 1, 2023.

4 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
5 February 27, 2023 - DO PASS AS AMENDED BY CS
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