

An Act

ENROLLED SENATE
BILL NO. 796

By: Coleman of the Senate

and

Marti of the House

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 that 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; and providing an effective date.

SUBJECT: Alcoholic beverages

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

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

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

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

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

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

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

2. Shall not ship wine intended for resale;

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

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

5. Shall report to the ABLE Commission ~~annually,~~ quarterly by a method prescribed by the ABLE Commission, ~~the total amount of wine shipped into the state the preceding calendar year~~ all of the following information for each wine shipment into the state pursuant to this section:

- a. the name and address of the Oklahoma resident who placed the order,
- b. the name of the common or permit carrier engaged in the shipment,
- c. the date of the shipment,
- d. the carrier tracking number, and
- e. the quantity of wine in the shipment;

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

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

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

9. Shipments of wine to consumers in Oklahoma from persons who do not possess a current Direct Wine Shipper Permit pursuant to this section are prohibited. Any person that violates this section is guilty of a misdemeanor and subject to a civil penalty as follows:

for the first offense shall be fined not more than One Thousand Five Hundred Dollars (\$1,500.00), for a second offense shall be fined not

more than Two Thousand Five Hundred Dollars (\$2,500.00), and for a third and subsequent offense shall be fined not more than Five Thousand Dollars (\$5,000.00).

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, which shall not be subject to the Oklahoma Open Records Act, of all 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 weight of the packages shipped;
5. The unique tracking number of the delivery; and
6. The date of delivery.

E. Notwithstanding any other provision of this Section, a common carrier that willfully refuses to file a report under this subsection shall be fined a penalty of up to five hundred dollars (\$500.00).

F. A common carrier shall not deliver a shipment of wine pursuant to this section to any person in this state unless the carrier has verified the validity of the Direct Wine Shipper's Permit prior to accepting shipment. A carrier may consider a direct wine shipper's permit to be valid unless notified otherwise by the ABLE Commission.

G. 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 be deemed to have consented to the jurisdiction of any agency or court of the State of Oklahoma

tasked with the enforcement of or adjudication of controversies related to this section and any related laws or rules; and

H. 1. Any express company, common carrier, or contract carrier, including any representative, agent, or employee on behalf of an express company, common carrier, or contract carrier, shall violate this section if it knowingly delivers in this state wine, beer, or distilled spirits without obtaining a signature at the time of delivery by an adult who is at least twenty-one (21) years of age is guilty of a business offense for which the express company, common carrier, or contract carrier that transports alcoholic liquor within this state shall be fined in accordance with Paragraph 3 of Subsection H of this Section.

2. Any express company, common carrier, or contract carrier that knowingly delivers wine, beer, or distilled spirits to a person in this state who is under the age of twenty-one (21) years of age is guilty of a business offense for which the express company, common carrier, or contract carrier that delivered the wine, beer, or distilled spirits shall be fined in accordance with Paragraph 3 of Subsection H of this Section.

3. Any express company, common carrier, or contract carrier that knowingly violates this section for a first offense shall be fined not more than One Thousand Five Hundred Dollars (\$1,500.00), for a second offense shall be fined not more than Two Thousand Five Hundred Dollars (\$2,500.00), and for a third and subsequent offense shall be fined not more than Five Thousand Dollars (\$5,000.00).

4. Any express company, common carrier, or contract carrier that knowingly carries or transports alcoholic beverages for delivery within this state in violation of this section for the first offense shall be fined not more than One Thousand Five Hundred Dollars (\$1,500.00), for a second offense shall be fined not more than Two Thousand Five Hundred Dollars (\$2,500.00), and for a third and subsequent offense shall be fined not more than Five Thousand Dollars (\$5,000.00).

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

6. The Commission shall notify common carriers of all shipments it has good cause to believe were made unlawfully into the state whether those be through a licensed direct shipper, fulfillment provider or an unlicensed entity. The Commission may prohibit a carrier from transporting alcohol on behalf of a consignor identified as having made an unlawful shipment beginning 15 days from the date of the notice. A common carrier may request, and the Commission must provide, a hearing to show good cause for the continued shipping by said consignor.

I. The ABLE Commission shall inspect and audit the records of both the direct wine shipper permit holder, as well as the common carrier and enforce accordingly.

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

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

Passed the Senate the 18th day of May, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the 27th day of April, 2023.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____