

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 796 By: Coleman of the Senate
3 and
4 Marti of the House
5
6

7 [alcoholic beverages - Direct Wine Shipper's Permit
8 - reports - shipment - penalties - jurisdiction -
notice - inspection and auditing - effective date]
9

10
11 AMENDMENT NO. 1. Strike the title, enacting clause, and entire bill
and insert:
12

13 "An Act relating to alcoholic beverages; amending 37A
14 O.S. 2021, Section 3-106, which relates to direct
wine shipper's permit; modifying requirements for
15 certain reports; providing information to be
reported; prohibiting shipment of wine to consumers
16 without a permit; providing penalties; providing that
certain shippers have consented to certain state
17 agency and court jurisdiction; prohibiting certain
acts; providing penalties; requiring notice to
18 carriers of shipments that are unlawful; requiring
inspection and auditing of records; and providing an
effective date.
19

20
21
22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

15 2. Payment of a registration fee of Three Hundred Dollars
16 (\$300.00) for original permits and One Hundred Fifty Dollars
17 (\$150.00) for renewal permits; and

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

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

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

1 2. Shall not ship wine intended for resale;

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

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

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

22 a. the name and address of the Oklahoma resident who
23 placed the order,
24

- 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:

1 for the first offense shall be fined not more than One Thousand Five
2 Hundred Dollars (\$1,500.00), for a second offense shall be fined not
3 more than Two Thousand Five Hundred Dollars (\$2,500.00), and for a
4 third and subsequent offense shall be fined not more than Five
5 Thousand Dollars (\$5,000.00).

6 D. Every express company, common carrier, contract carrier and
7 every firm or corporation that shall bring, carry or transport wine
8 for delivery to any person in the state, except wine or spirit
9 wholesalers or beer distributors, shall prepare and file quarterly
10 with the ABLE Commission a report, which shall not be subject to the
11 Oklahoma Open Records Act, of all known wine 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 and business address of the consignor shipping the
16 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. Notwithstanding any other provision of this Section, a
21 common carrier that willfully refuses to file a report under this
22 subsection shall be fined a penalty of up to five hundred dollars
23 (\$500.00).

24

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

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

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

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

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

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

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

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

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

13 J. The provisions of this section do not apply to a motor
14 carrier or freight forwarder as defined in Section 13102 of Title 49
15 of the United States Code or to an air carrier as defined in Section
16 40102 of Title 49 of the United States Code.

17 SECTION 2. This act shall become effective November 1, 2023."
18
19
20
21
22
23
24

1 ENGROSSED SENATE
BILL NO. 796

By: Coleman of the Senate

2
3 and

4 Marti of the House

5
6 [alcoholic beverages - Direct Wine Shipper's Permit
7 - reports - shipment - penalties - jurisdiction -
notice - inspection and auditing - effective date]

8

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

10 SECTION 3. AMENDATORY 37A O.S. 2021, Section 3-106, is

11 amended to read as follows:

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

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

24

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

3 2. Payment of a registration fee of Three Hundred Dollars
4 (\$300.00) for original permits and One Hundred Fifty Dollars
5 (\$150.00) for renewal permits; and

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

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

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

13 2. Shall not ship wine intended for resale;

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

19 4. Shall require the transporter or common carrier that
20 delivers the wine to obtain the signature of a person twenty-one
21 (21) years of age or older at the delivery address at the time of
22 delivery. At the expense of the Direct Wine Shipper, the Direct
23 Wine Shipper shall receive a delivery confirmation from the express
24 company, common carrier or contract carrier indicating the location

1 of delivery and the name and signature of the individual who
2 accepted the delivery. The ABLE Commission shall design and create
3 a label or approve a label that must be affixed to the shipping
4 container by the licensee;

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

- 9 a. the name and address of the Oklahoma resident who
10 placed the order,
- 11 b. for each completed shipment, evidence of signature by
12 an individual twenty-one (21) years of age or older,
- 13 c. the name and license number of the common or permit
14 carrier engaged in the shipment,
- 15 d. for each shipment by a fulfillment center on behalf of
16 the Direct Wine Shipper, the name and license number
17 of the fulfillment center engaged in the shipment,
- 18 e. the date of the shipment,
- 19 f. the carrier tracking number, and
- 20 g. the quantity of wine in the shipment;

21 6. Shall annually pay to the Oklahoma Tax Commission all
22 applicable taxes due on sales authorized by this section to Oklahoma
23 residents in the preceding calendar year. The amount of such taxes
24 shall be calculated as if the sale were in ~~Oklahoma~~ this state at

1 the location where delivery is made. Upon request, permit holders
2 shall permit the Tax Commission to perform an audit of the permit
3 holder's records in order to assure compliance;

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

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

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

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

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

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

22 E. Every express company, common carrier, contract carrier and
23 every firm or corporation that shall bring, carry or transport wine
24 for delivery to any person in the state, except wine or spirit

1 wholesalers or beer distributors, shall prepare and file quarterly
2 with the ABLE Commission a report, which shall not be subject to the
3 Oklahoma Open Records Act, of all known wine, beer, and distilled
4 spirits shipments containing:

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

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

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

10 4. The weight of the packages shipped;

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

12 6. The date of delivery.

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

19 G. Every express company, common carrier, contract carrier, and
20 every firm or corporation that shall bring, carry, or transport wine
21 for delivery to any person in this state, except wine and spirits
22 wholesalers or beer distributors, shall be deemed to have consented
23 to the jurisdiction of any agency or court of this state tasked with
24

1 the enforcement of or adjudication of controversies related to this
2 section and any related laws or rules.

3 H. No express company, common carrier, or contract carrier nor
4 any representative, agent, or employee on behalf of an express
5 company, common carrier, or contract carrier shall:

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

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

14 I. Any express company, common carrier, or contract carrier
15 that carries or transports alcoholic beverages for delivery within
16 this state that violates this section shall be fined not more than:

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

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

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

23
24

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

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

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

16 L. The provisions of this section do not apply to a motor
17 carrier or freight forwarder as defined in Section 13102 of Title 49
18 of the United States Code or to an air carrier as defined in Section
19 40102 of Title 49 of the United States Code.

20 SECTION 4. This act shall become effective November 1, 2023.
21
22
23
24

1 Passed the Senate the 23rd day of March, 2023.

2
3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2023.

7
8 _____
9 Presiding Officer of the House
10 of Representatives