

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1819

By: Representative Rushing

For An Act To Be Entitled

AN ACT TO AMEND THE DIRECT SHIPMENT OF VINOUS LIQUOR ACT; TO ESTABLISH A WINE DIRECT SHIPPER PERMIT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE DIRECT SHIPMENT OF VINOUS LIQUOR ACT; AND TO ESTABLISH A WINE DIRECT SHIPPER PERMIT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 3, Chapter 4, is amended to add an additional subchapter to read as follows:

Subchapter 11 – Wine Direct Shipper Permit

3-4-1101. Wine direct shipper permit.

(a) As used in this subchapter, "vinous liquor" means the fermented juices of fruits containing more than five percent (5%) and not more than twenty-one percent (21%) of alcohol by weight.

(b) A person may apply to the Director of the Alcoholic Beverage Control Division for a wine direct shipper permit that authorizes the permit holder to ship vinous liquor directly to the residence of a consumer pursuant to the Direct Shipment of Vinous Liquor Act, § 3-5-1701 et seq.

(c) The permit may be issued by the Alcoholic Beverage Control Division to a qualified person.

(d) A person applying for a wine direct shipper permit shall provide the division with a copy of the person's current license to manufacture,



supply, or import wine issued by:

(1) The person's state of domicile; and

(2) The United States Alcohol and Tobacco Tax and Trade

Bureau.

(e)(1) A wine direct shipper permit shall be issued annually for a fee of one hundred dollars (\$100) and shall expire on June 30 of each year.

(2) The wine direct shipper permit may be renewed annually for a fee of fifty dollars (\$50).

(f) A wine direct shipper permit holder shall collect and pay all sales taxes and excise taxes due on a sale to an individual of this state as required under by the Direct Shipment of Vinous Liquor Act, § 3-5-1701 et seq.

3-4-1102. Rules.

The Alcoholic Beverage Control Division may adopt rules to carry out this subchapter, to establish appropriate application forms, permit forms, and procedures, and to do all other things necessary to implement this subchapter.

SECTION 2. Arkansas Code § 3-5-1702 is amended to read as follows:

3-5-1702. Definitions.

As used in this subchapter:

(1) ~~“Small farm winery” means a wine-making establishment that:~~

~~(A) Is licensed under § 3-5-1601 et seq.; and~~

~~(B) Produced by fermentation at least eight hundred~~

~~gallons (800 gals.) of wine in the previous calendar year, as reported on the winery's TTB F 5120-17 Report of Wine Premises Operations; "Person" means an individual, partnership, limited liability company, limited liability partnership, corporation, firm, company, or other entity doing business in Arkansas; and~~

(2) “Vinous liquor” means the fermented juices of fruits containing more than five percent (5%) and not more than twenty-one percent (21%) of alcohol by weight; ~~and~~

~~(3) “Winery” means an establishment that makes vinous liquor.~~

SECTION 3. Arkansas Code § 3-5-1703 is amended to read as follows:

3-5-1703. Registration – Renewal fee, – Wine direct shipper permit.

(a)~~(1)~~ Unless registered under this subchapter, a winery person licensed as a wine manufacturer, supplier, or importer by this state or the state where ~~its~~ the person's principal place of business is located shall not ship vinous liquor to an Arkansas consumer.

~~(2) This section does not apply to a small farm winery licensed under § 3-5-1601 et seq.~~

(b) Prior to the ~~winery's~~ first shipment into or within the state, the winery person seeking to ship vinous liquor directly to a consumer in this state shall:

(1) ~~Register~~ File an application with the Alcoholic Beverage Control Division;

(2) Provide the division with a copy of the ~~winery's~~ person's current license to manufacture, supply, or import wine issued by:

(A) The person's state of domicile; and

(B) ~~The Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury~~ United States Alcohol and Tobacco Tax and Trade Bureau; ~~and~~

(3) Pay a registration fee of ~~twenty-five~~ one hundred dollars ~~(\$25.00).~~ (\$100.00); and

(4) Obtain a wine direct shipper permit.

~~(c) A winery shall renew its application each year with the division by:~~

~~(1) Providing the division with a copy of the licenses required under subdivision (b)(2) of this section; and~~

~~(2) Paying a renewal fee of twenty-five dollars (\$25.00).~~ The holder of a wine direct shipper permit shall allow the division to perform an audit of the wine direct shipper permit holder's records regarding the shipment of wine into the state upon request.

(d) If the holder of a wine direct shipper permit is located outside of the state, the holder of the wine direct shipper permit is required to report annually to the division the total amount of wine shipped into the state each preceding calendar year.

(e) The holder may renew a wine direct shipper permit each year with the division by:

(1) Providing the division with a copy of the license and the

permit required under subdivision (b)(2) of this section; and

(2) Paying a renewal fee of fifty dollars (\$50.00).

(f) Upon application for a wine direct shipper permit, a wine direct shipper permit applicant consents to the jurisdiction of the division or any other state agency and the state courts concerning enforcement of this section or related state laws or rules.

SECTION 4. Arkansas Code § 3-5-1704 is amended to read as follows:

3-5-1704. ~~Purchase~~—Payment of taxes.

(a) ~~A consumer must:~~

~~(1) Be physically present at the winery to purchase the vinous liquor to be shipped into or within the state; and~~

~~(2) Provide identification to the winery proving that he or she is twenty-one (21) years of age or older.~~

~~(b)(1)~~ A winery wine direct shipper permit holder shall collect all sales taxes and excise taxes due on a sale to an individual of this state as if the sale took place ~~on the premises of an~~ in Arkansas ~~small farm winery~~, including without limitation taxes under §§ 3-5-1605, 3-7-104, 3-7-111, and 3-7-201.

~~(2)(b)~~ Taxes collected by the winery wine direct shipper permit holder shall be submitted to the Department of Finance and Administration as directed without limitation under §§ 3-5-1605, 3-7-104, 3-7-111, and 3-7-201.

~~(3)(c)~~ A winery wine direct shipper permit holder shall source the collection of sales and use taxes to the purchaser's delivery address in accordance with § 26-52-521(b)(2).

SECTION 5. Arkansas Code § 3-5-1705 is amended to read as follows:

3-5-1705. Direct shipment.

(a) A winery wine direct shipper permit holder shall ship only a vinous liquor to a private residence.

(b) A winery wine direct shipper permit holder may ~~only ship one (1) case up to and including twenty-four (24) 9-liter cases~~ of vinous liquor per consumer ~~in any calendar quarter~~ annually for the consumer's personal use and not for resale.

~~(c)(1)~~ A wine direct shipper permit holder shall ensure that ~~shipment of a vinous liquor shall have a shipping label provided by the Alcoholic~~

~~Beverage Control Division affixed to the shipping package~~ all containers of vinous liquor shipped to and delivered within this state are conspicuously labeled as follows:

“CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY”.

~~(2) The fee for each label for a shipment shall not exceed ten dollars (\$10.00).~~

SECTION 6. Arkansas Code § 3-5-1706 is amended to read as follows:
3-5-1706. Delivery.

A ~~winery~~ wine direct shipper permit holder shall have ~~the~~ a vinous liquor delivered to an Arkansas consumer during the hours of the day that alcoholic beverages may be purchased in the state.

SECTION 7. Arkansas Code § 3-5-1708 is amended to read as follows:
3-5-1708. Disposition of funds.

(a) Permit fees or taxes, ~~label fees,~~ penalties, fines, proceeds of all forfeitures, special inspection fees, and costs received by the Director of the Department of Finance and Administration under this subchapter shall be general revenues and shall be deposited into the State Treasury to the credit of the State Apportionment Fund.

(b) The Treasurer of State shall allocate and transfer ~~those~~ the revenues to the various State Treasury funds participating in general revenues in the respective proportions to each as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.

SECTION 8. Arkansas Code § 3-5-1709 is repealed.

~~3-5-1709. Small farm winery shipment.~~

~~(a)(1) A small farm winery licensee with a wine wholesale permit under § 3-5-1602(c)(1)(E) may ship small farm winery wine under this subchapter to a private resident without the private resident having been physically present or having made an in-person purchase at the small farm winery if the shipment includes only small farm winery wine.~~

~~(2) Additional shipping registration of a small farm winery is not required for a shipment under subdivision (a)(1) of this section.~~

~~(b) A private resident shall provide identification to the small farm winery proving that he or she is twenty one (21) years of age or older.~~

~~(c) A small farm winery may ship only one (1) case of small farm winery wine per private resident in any month.~~

~~(d) A small farm winery shipping under this subchapter shall ensure that all containers of small farm winery wine delivered within this state are conspicuously labeled as follows:~~

~~“CONTAINS ALCOHOL; SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY”.~~

~~(e)(1) A small farm winery shall collect all sales taxes and excise taxes due on a sale to an individual of this state as if the sale took place on the premises of the small farm winery, including without limitation taxes under §§ 3-5-1605, 3-7-104, 3-7-111, and 3-7-201.~~

~~(2) Taxes collected by the small farm winery shall be submitted to the Department of Finance and Administration as directed without limitation under §§ 3-5-1605, 3-7-104, 3-7-111, and 3-7-201.~~

~~(3) A small farm winery shall source the collection of sales and use taxes to the purchaser’s delivery address in accordance with § 26-52-521(b)(2).~~

~~(f) A small farm winery that makes a direct shipment of small farm winery wine under this section shall maintain records regarding each shipment of small farm winery wine that include the:~~

~~(1) Name and address of the person to whom the small farm winery wine is:~~

~~(A) Sold; and~~

~~(B) Billed; and~~

~~(2) Date of shipment.~~

SECTION 9. Arkansas Code § 3-5-1710 is repealed.

~~3-5-1710. Permits — Drawing — Issuance.~~

~~(a)(1) Within sixty (60) days after April 3, 2017, the Alcoholic Beverage Control Board shall notify by mail all small farm wineries licensed under § 3-5-1602 and holding a small farm wine wholesale permit under § 3-5-1602(c)(1)(E) issued on or before April 15, 2017, that they are eligible for a small farm winery private resident shipping permit if the winery produced by fermentation at least eight hundred gallons (800 gals.) of wine in the~~

~~previous calendar year as shown on the winery's TTB F 5120-17.~~

~~(2) The board shall issue a small farm winery private resident shipping permit to a small farm winery holding a small farm wine wholesale permit under § 3-5-1602(c)(1)(E) issued on or before April 15, 2017, upon receipt of the following:~~

~~(A) Proof that the winery produced by fermentation at least eight hundred gallons (800 gals.) of wine in the previous calendar year as shown on the winery's TTB F 5120-17; and~~

~~(B) Payment of a licensing fee of twenty-five dollars (\$25.00).~~

~~(b)(1) In each subsequent year, the board may issue up to five (5) small farm winery private resident shipping permits to small farm wineries licensed under § 3-5-1602 and holding a small farm wine wholesale permit under § 3-5-1602(c)(1)(E) issued after April 15, 2017, if the winery produced by fermentation at least eight hundred gallons (800 gals.) of wine in the previous calendar year as shown on the winery's TTB F 5120-17.~~

~~(2) The board shall notify the public at large by legal notice and internet posting that the board will accept applications for small farm winery private resident shipping permits.~~

~~(3) The notice required under subdivision (b)(2) of this section shall include:~~

~~(A) The number of permits to be issued;~~

~~(B) The last date applications will be accepted; and~~

~~(C) The date of a drawing to determine which applicants will be awarded a permit if the number of applicants exceeds the number of permits authorized by the board.~~

~~(4) The board shall not accept an application more than ninety (90) days after the date of publication of the notice required under subdivision (b)(2) of this section.~~

~~(5)(A) If the number of applicants for a permit exceeds the number of permits authorized by the board, the Director of the Alcoholic Beverage Control Division shall conduct a drawing not earlier than one hundred twenty (120) days after the publication of the notice specified in subdivision (b)(2) of this section, nor later than one hundred eighty (180) days after publication of the notice.~~

~~(B)(i) On the date of the drawing, each applicant for a~~

~~permit or his or her agent shall draw a number between one (1) and a number equal to the number of permits to be granted of applications filed.~~

~~(ii) Position numbers shall not be transferred or assigned.~~

~~(6) Upon payment of a licensing fee of twenty-five dollars (\$25.00), the director shall issue a permit to each eligible licensee that draws a number one (1) through the number authorized by the board for the drawing.~~

~~(c) A small farm winery shall renew its small farm winery private-resident shipping permit each year with the division by paying a renewal fee of twenty-five dollars (\$25.00).~~

SECTION 10. Arkansas Code Title 3, Chapter 5, Subchapter 17, is amended to add an additional section to read as follows:

3-5-1711. Administration and penalties.

(a)(1) The Alcoholic Beverage Control Division may enforce the requirements of this subchapter by administrative proceedings to suspend or revoke a wine direct shipper permit.

(2) The division may accept payment of an offer in compromise in lieu of suspension of the wine direct shipper permit holder's permit as determined by a rule promulgated by the division.

(b) A person that does not hold a wine direct shipper permit shall not ship wine directly to consumers.

(c) A person that knowingly makes, participates in, transports, imports, or receives a shipment from a person without a wine direct shipper permit upon conviction may be subject to the following:

(1) An administrative penalty as established by the division for a first offense;

(2) A Class C misdemeanor for a second offense; and

(3) A Class D felony for a third and subsequent offense.