

SB172

215957-2

By Senator Singleton

RFD: Fiscal Responsibility and Economic Development

First Read: 02-FEB-22

SYNOPSIS: Existing law provides that a person who obtains a direct wine shipper license or wine fulfillment center license may ship wine directly to an Alabama resident 21 years of age or older, for personal use and not for resale.

This bill would provide that a direct wine shipper licensee or wine fulfillment center licensee may ship wine to an Alabama resident in any county or municipality in the state, dry or wet.

This bill would also amend the application requirements for a direct wine shipper or wine fulfillment center license, to provide that the board may not require additional liquor liability insurance; background checks of officers, employees, or agents of the applicant; identification or proof of citizenship of officers, employees, or agents of the applicant; or any in-person appointment or meeting.

This bill would amend the reporting requirements for direct wine shipper licensees and fulfillment center licensees.

This bill would also exempt direct wine shippers and wine fulfillment centers from registering as a foreign entity with the Secretary of State.

This bill would also make nonsubstantive, technical revisions to update the existing code language to current style.

A BILL
TO BE ENTITLED
AN ACT

Relating to alcoholic beverages; to amend Sections 28-3A-6.1 and 28-3A-6.2, Code of Alabama 1975, as added by Section 3 of Act 2021-419 of the 2021 Regular Session, relating to the shipment of wine directly to Alabama residents, to provide that a direct wine shipper licensee or wine fulfillment center licensee may ship wine directly to an Alabama resident who is at least 21 years of age in any county or municipality in the state, dry or wet; to provide further for reports to the board by direct wine shipper licensees and fulfillment center licensees; to provide further for the requirements of the application for a direct wine shipper license or wine fulfillment center license; to exempt direct

wine shipper licensees and wine fulfillment center licensees from registration as a foreign entity with the Secretary of State; and to make nonsubstantive, technical revisions to update the existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 28-3A-6.1 and 28-3A-6.2, Code of Alabama 1975, as added by Section 3 of Act 2021-419 of the 2021 Regular Session, are amended to read as follows:

"§28-3A-6.1.

"(a) Any person licensed as a wine manufacturer who holds a federal basic wine manufacturing permit pursuant to the Federal Alcohol Administration Act, 27 U.S.C. § 201 et seq., and who is in the business of manufacturing and bottling wine may obtain a direct wine shipper license from the board as provided in this section. A direct wine shipper licensee may ship annually up to 12 cases of unopened containers of wine to any one Alabama resident in a 12-month period, each case not exceeding nine liters of wine. A direct wine shipper licensee may ship only wine: (i) produced by the direct wine shipper licensee; (ii) produced by or for the direct wine shipper licensee under a written contract, existing at the time of shipment, with another manufacturer of wine that holds a federal basic wine manufacturing permit pursuant to the Federal Alcohol Administration Act, 27 U.S.C. § 201 et seq., and who is in the business of manufacturing and bottling wine; or (iii) exclusively produced and bottled for the direct wine shipper licensee by a manufacturer of wine that holds a

federal basic wine manufacturing permit pursuant to the Federal Alcohol Administration Act, 27 U.S.C. § 201 et seq., and who is in the business of manufacturing and bottling wine. The wine shall be shipped and transported by common or permit carrier directly from the direct wine shipper licensee's licensed premises, or from the direct wine shipper licensee through a wine fulfillment center as provided in Section 28-3A-6.2, to a resident of Alabama in any county or municipality in the state, dry or wet, who is at least 21 years of age for the resident's personal use and not for resale.

"(b) In order to receive a license to ship wine to an Alabama resident, the applicant for a direct wine shipper license shall do all of the following:

"(1) File an application with the board.

"(2) Pay an application fee of two hundred dollars (\$200).

"(3) Provide to the board a true copy of its current wine manufacturer license issued by the board or issued by the state in which it manufactures wine and a true copy of its federal basic wine manufacturing permit.

"(c) The board may not require as part of an application submitted under subsection (b) any of the following:

"(1) Any liquor liability insurance beyond the requirements for other board licenses possessed or applied for by the applicant.

"(2) A background check or permission for the board to conduct a background check on any officer, employee, or agent of the applicant.

"(3) Identification or proof of citizenship of any officer, employee, or agent of the applicant.

"(4) Any in-person appointment or meeting.

~~"(c)~~ (d) A direct wine shipper licensee:

"(1) May not ship more wine than is specified in subsection (a) to any one consumer in a 12-month period.

"(2) May not ship any wine to any address or property that is any of the following:

"a. Any premises licensed by the board.

"b. A public or private elementary, secondary, or post-secondary educational school, including any dormitory, housing, or common space located on the campus of any elementary, secondary, or post-secondary educational school.

"c. A prison, reformatory, or other correctional facility.

"d. A hospital or other healthcare facility, including, but not limited to, an acute care, addiction or substance abuse, or mental or psychiatric care facility.

"e. A locker, a mailbox, a storage facility, or a package shipping or similar service business.

"f. An address that is not a permanent street address.

"(3) May only ship wine that has been approved by the board for sale and shipment within or into the state and

for which the direct wine shipper licensee meets either of the following criteria:

"a. Owns the Certificate of Label Approval issued by the Alcohol and Tobacco Tax and Trade Bureau.

"b. Has the exclusive right to sell the wine in the United States under a written contract, existing at the time of shipment, with the manufacturer of wine that holds a federal basic wine manufacturing permit pursuant to the Federal Alcohol Administration Act, 27 U.S.C. § 201 et seq., and is the owner of the Certificate of Label Approval issued by the Alcohol and Tobacco Tax and Trade Bureau.

"(4) Shall ensure that all containers of 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."

"(5) Shall report to the board on a quarterly basis in a manner prescribed by the board all of the following information for each wine shipment into the state pursuant to this section:

"a. The name and address of the ~~Alabama resident~~ consumer who placed the order.

"b. For each completed shipment, evidence of signature by an individual age 21 years or older.

"c. The name and license number of the common or permit carrier engaged in the shipment.

"d. For each shipment by a wine fulfillment center licensee on behalf of the direct wine shipper, the name and

license number of the wine fulfillment center licensee engaged in the shipment.

"e. The date of shipment.

"f. The carrier tracking number.

"g. The quantity of wine in the shipment.

"(6) Whether located within or outside of this state, shall collect and properly remit all state and local sales or use taxes and excise taxes due on sales to Alabama residents.

"(7) Shall permit the board or the Department of Revenue to perform an audit of the direct wine shipper licensee's records upon request.

"(8) Shall obtain from the customer an attestation that he or she is at least 21 years of age at the time the order is placed.

"(9) Shall be deemed to have consented to the jurisdiction of the board or any law enforcement agency and the Alabama courts concerning enforcement of this section and any related laws or administrative rules.

"(10) Shall not be required to register as a foreign entity with the Secretary of State under Section 10A-1-7.01 to ship wine as authorized in this section.

~~"(d)~~ (e) A direct wine shipper licensee may renew its license with the board by paying annually a renewal fee of one hundred fifty dollars (\$150) and providing the board a true copy of its current manufacturer license issued by the board and its federal basic wine manufacturing permit.

~~"(e)~~ (f) The board may adopt rules pursuant to the Administrative Procedure Act to implement this section.

~~"(f)~~ (g) The board may enforce the requirements of this section to suspend or revoke a direct wine shipper license by the same administrative proceedings that apply to alcoholic beverage licenses, and the board may accept payment of a fine in lieu of suspension or revocation. Payments of fines shall be determined by rule adopted by the board.

~~"(g)~~ (h) Shipments of wine direct to consumers in Alabama from persons who do not possess a current direct wine shipper license pursuant to this section are prohibited. Any person that violates this section is guilty of a Class C misdemeanor and shall also be subject to a civil penalty imposed by the board by administrative proceedings that apply to alcoholic beverage licenses, as follows:

"(1) For the first violation, a civil penalty not to exceed five hundred dollars (\$500).

"(2) For a second violation, a civil penalty not to exceed three thousand dollars (\$3,000).

"(3) For a third or any subsequent violation, a civil penalty not to exceed six thousand dollars (\$6,000).

~~"(h)~~ (i) Any fines or fees received by the board under this section, including, but not limited to, the direct wine shipper licensee fee, shall be used by the board in order to perform its regulatory duties under Title 28.

~~"(i)~~ (j) A direct wine shipper licensee may not avoid liability under this section by subcontracting with a

third party to perform its obligations required pursuant to this section.

"~~(j)~~ (k) For purposes of this chapter, the following terms shall have the following meanings:

"(1) DIRECT WINE SHIPPER. A person in possession of a current, valid direct wine shipper license.

"(2) DIRECT WINE SHIPPER LICENSE. A license issued by the board that authorizes the licensee to ship wine or contract for the shipment of wine from a manufacturer to an Alabama resident pursuant to this section and Section 28-3A-6.2.

"(3) SHIPMENT. The transportation of wine from a manufacturer to an Alabama resident as provided in this chapter.

"(4) WINE FULFILLMENT CENTER. A premises that operates as a bailment warehouse for wine permitted to be sold directly by a direct wine shipper licensee to an Alabama resident pursuant to this section and Section 28-3A-6.2.

"(5) WINE FULFILLMENT CENTER LICENSE. A license issued by the board that authorizes a licensed wine fulfillment center to ship wine to an Alabama resident on behalf of a direct wine shipper pursuant to this section and Section 28-3A-6.2.

"§28-3A-6.2.

"(a) (1) Any person who is not a common or permit carrier and who does not hold a direct wine shipper, wholesaler, retailer, manufacturer, or importer license issued

by the board and who is not owned or controlled by a common or permit carrier or a direct wine shipper, wholesaler, retailer, manufacturer, or importer licensee of the board may obtain a wine fulfillment center license from the board as provided in this section. A wine fulfillment center licensee, subject to compliance with all terms and provisions of this section and Section 28-3A-6.1 may contract with a common or permit carrier for the shipment of unopened containers of wine on behalf of a direct wine shipper licensee directly to an Alabama resident in any county or municipality in the state, dry or wet, who is at least 21 years of age, for personal use by the individual and not for resale.

"(2) A person shall obtain a separate wine fulfillment center license for each physical premises that is to be used as a wine fulfillment center before shipping wine to any Alabama resident from that premises, and shall pay an annual license fee of five hundred dollars (\$500), plus an additional one hundred dollars (\$100) for each additional premises from which shipments to Alabama residents will be made.

"(3) The holder of a wine fulfillment center license may only provide logistics services of warehousing, packaging, order fulfillment, and shipment of wine for a direct wine shipper licensee for which the wine fulfillment center licensee is the bailee of the wine. Wine held in bailment by a wine fulfillment center licensee shall remain the property of

the direct wine shipper licensee until loaded on conveyance for direct shipment to an Alabama resident.

"(4) A wine fulfillment center licensee ~~shall~~ may not ship wine into or within the state from, or on behalf of, any of the following:

"a. An unlicensed direct shipper of wine, either in-state or out-of-state.

"b. A retailer licensed by the board.

"c. An out-of-state retailer.

"d. A person that does not hold a direct wine shipper license.

"(b) (1) A wine fulfillment center license applicant shall provide all of the following information to the board as part of its application:

~~"(1)~~ a. The precise location or locations at which the licensee will engage in logistics services for wine to be shipped into the state.

~~"(2)~~ b. Any other information required by the board.

"(2) Notwithstanding paragraph (1)b. of this subsection, the board may not require as part of a wine fulfillment center license application any of the following:

"a. Any liquor liability insurance beyond the requirements for other board licenses possessed or applied for by the applicant.

"b. A background check or permission for the board to conduct a background check on any officer, employee, or agent of the applicant.

"c. Identification or proof of citizenship of any officer, employee, or agent of the applicant.

"d. Any in-person appointment or meeting.

"(c) A wine fulfillment center licensee shall do all of the following:

"(1) Annually renew its wine fulfillment center license in a manner as established by rule of the board and pay any initial and annual license fees.

"(2) Enter into a contract with a direct wine shipper licensee designating the wine fulfillment center licensee as the agent of the direct wine shipper licensee for purposes of this section and Section 28-3A-6.1. A wine fulfillment center licensee may not avoid liability under this section by subcontracting with a third party to perform its obligations pursuant to this section.

"(3) Maintain a compliance program documenting that all wine shipped by each direct wine shipper licensee through the wine fulfillment center licensee satisfies the requirements set forth in subdivisions (c)(1) and (c)(2) of Section 28-3A-6.1.

"(4) Make all commercially reasonable efforts to verify the validity of each direct wine shipper license prior to making any shipment on behalf of the direct wine shipper licensee.

"(5) Ensure all containers of wine shipped by the wine fulfillment center licensee to an Alabama resident are conspicuously labeled with the following words: "CONTAINS

ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY."

"(6) Report to the board on a quarterly basis in a manner prescribed by the board all of the following information for each wine shipment into the state pursuant to this section:

"a. The name, address, and license number of the direct wine shipper licensee and the point of origin of shipment from which the wine fulfillment center licensee received the wine, if different from the address of the direct wine shipper licensee.

"b. The name and address of the ~~Alabama resident~~ consumer who placed the order.

"c. For each completed shipment, evidence of signature by an individual age 21 years or older.

"d. The name and license number of the common or permit carrier engaged in the shipment.

"e. The date of shipment.

"f. The carrier tracking number.

"g. The quantity of wine in the shipment.

"(7) Maintain for a minimum of three years from the date of receipt from a direct wine shipper licensee or the date of shipment to an Alabama resident, as applicable, and permit the board and any of its designees to inspect, verify, or perform an audit of all of the information listed in subdivision (6).

"(8) Upon violation of this title or a rule of the board, be subject to a civil penalty imposed by the board by administrative proceedings that apply to alcoholic beverage licenses, as follows:

~~"(1)~~ a. For the first violation, a civil penalty not to exceed five hundred dollars (\$500).

~~"(2)~~ b. For a second violation, a civil penalty not to exceed three thousand dollars (\$3,000).

~~"(3)~~ c. For a third or any subsequent violation, a civil penalty not to exceed six thousand dollars (\$6,000).

"(9) Be deemed to have consented to the jurisdiction of the board and the other state agencies and the state courts concerning enforcement of this section and Section 28-3A-6.1.

"(d) A wine fulfillment center licensee shall not be required to register as a foreign entity with the Secretary of State under Section 10A-1-7.01 to ship wine as authorized in this section.

~~"(d)~~ (e) Any fines or fees received by the board under this section shall be used by the board in order to perform its regulatory duties under Title 28.

~~"(e)~~ (f) The board may adopt rules to implement this section."

Section 2. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.