

ALCOHOLIC BEVERAGE CODE

TITLE 3. LICENSES AND PERMITS

SUBTITLE A. PERMITS

CHAPTER 54. OUT-OF-STATE WINERY DIRECT SHIPPER'S PERMIT

Sec. 54.01. AUTHORIZED ACTIVITIES. The holder of an out-of-state winery direct shipper's permit may sell and deliver wine that is produced or bottled by the permittee to an ultimate consumer located in the State of Texas. Delivery must be by the holder of a carrier permit.

Added by Acts 2005, 79th Leg., Ch. 36 (S.B. 877), Sec. 2, eff. May 9, 2005.

Sec. 54.02. PROHIBITED ACTIVITIES. The holder of an out-of-state winery direct shipper's permit may not:

- (1) sell or ship wine to a minor;
- (2) deliver wine to a consumer using a carrier that does not hold a carrier's permit under this code;
- (3) deliver to the same consumer in this state more than nine gallons of wine within any calendar month or more than 36 gallons of wine within any 12-month period; or
- (4) sell to ultimate consumers more than 35,000 gallons of wine annually.

Added by Acts 2005, 79th Leg., Ch. 36 (S.B. 877), Sec. 2, eff. May 9, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 346 (H.B. 1084), Sec. 2, eff. September 1, 2009.

Sec. 54.03. QUALIFICATIONS FOR PERMIT. An out-of-state winery direct shipper's permit may only be issued to a person who:

- (1) does not hold a winery permit in the State of Texas;
- (2) operates a winery located in the United States and holds all state and federal permits necessary to operate the winery, including the federal winemaker's and blender's basic permit;

(3) holds a Texas sales tax permit;

(4) expressly submits to personal jurisdiction in Texas state and federal courts and expressly submits to venue in Travis County, Texas, as proper venue for any proceedings that may be initiated by or against the commission; and

(5) does not directly or indirectly have any financial interest in a Texas wholesaler or retailer as those terms are used in Section 102.01.

Added by Acts 2005, 79th Leg., Ch. 36 (S.B. 877), Sec. 2, eff. May 9, 2005.

Sec. 54.05. IDENTIFICATION REQUIREMENTS. (a) All wine sold or shipped by the holder of an out-of-state winery direct shipper's permit must be in a package that is clearly and conspicuously labeled showing that:

(1) the package contains wine; and

(2) the package may only be delivered to a person described in Subsection (b).

(b) Wine sold or shipped by a holder of an out-of-state winery direct shipper's permit may not be delivered to any person other than:

(1) the person who purchased the wine;

(2) a recipient designated in advance by such purchaser; or

(3) a person at the delivery address who is age 21 or over.

(c) Wine may be delivered only to a person who is age 21 or over after the person accepting the package:

(1) presents valid proof of identity and age; and

(2) personally signs a receipt acknowledging delivery of the package.

Added by Acts 2005, 79th Leg., Ch. 36 (S.B. 877), Sec. 2, eff. May 9, 2005.

Sec. 54.06. REPORTS AND RECORDKEEPING. (a) The holder of an out-of-state winery direct shipper's permit shall maintain records of all sales and deliveries made under the permit.

(b) The holder of an out-of-state winery direct shipper's permit shall maintain complete sales and delivery records for all sales and deliveries made under the permit for at least five years from the date of sale. These records shall be made available upon request for inspection by the commission or any other appropriate state agency.

(c) The commission shall establish rules requiring the holder of an out-of-state winery direct shipper's permit to periodically file reports providing the commission with such information as the commission may determine is needed to more efficiently and effectively enforce the state laws applicable to the permit holder.

Added by Acts 2005, 79th Leg., Ch. 36 (S.B. 877), Sec. 2, eff. May 9, 2005.

Sec. 54.07. LIABILITY FOR AND PAYMENT OF TAXES. (a) Sales made by the holder of an out-of-state winery direct shipper's permit shall be deemed to have been made in the State of Texas for delivery in the State of Texas.

(b) The holder of an out-of-state winery direct shipper's permit shall be responsible for paying the following state taxes related to sales and deliveries made under this chapter:

(1) excise taxes on the wine sold, payable at the same rate and in the same manner as if the permittee were a Texas winery located in Texas; and

(2) state sales and use taxes all payable at the same rate and in the same manner as if the permittee were a Texas winery located in Texas.

(c) An ultimate consumer who purchases wine from the holder of an out-of-state winery direct shipper's permit under this chapter shall be considered to be purchasing the wine from a Texas permittee and shall not be charged the administrative fee for personal imports set forth in Section 107.07.

Added by Acts 2005, 79th Leg., Ch. 36 (S.B. 877), Sec. 2, eff. May 9, 2005.

Sec. 54.08. RESALE PROHIBITED. A consumer purchasing wine

from the holder of an out-of-state winery direct shipper's permit may not resell the wine, and any such wine that is resold is an illicit beverage as defined in Section 1.04(4).

Added by Acts 2005, 79th Leg., Ch. 36 (S.B. 877), Sec. 2, eff. May 9, 2005.

Sec. 54.09. DELIVERY AREAS. Wine shipped under this chapter may be delivered to persons located in a dry area.

Added by Acts 2005, 79th Leg., Ch. 36 (S.B. 877), Sec. 2, eff. May 9, 2005.

Sec. 54.10. WINE LABEL APPROVAL NOT REQUIRED. If the holder of an out-of-state winery direct shipper's permit has satisfied all federal label approval requirements for a particular brand of wine, then no further label approval shall be required by the commission.

Added by Acts 2005, 79th Leg., Ch. 36 (S.B. 877), Sec. 2, eff. May 9, 2005.

Sec. 54.11. RULES. The commission shall adopt rules and forms necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 36 (S.B. 877), Sec. 2, eff. May 9, 2005.

Sec. 54.12. PENALTY FOR SHIPPING WITHOUT A PERMIT. Any person who does not hold an out-of-state winery direct shipper's permit who sells and ships alcohol from outside of Texas to an ultimate consumer in Texas commits on first offense a Class B misdemeanor, on second offense a Class A misdemeanor, and on third offense a state jail felony.

Added by Acts 2005, 79th Leg., Ch. 36 (S.B. 877), Sec. 2, eff. May 9, 2005.