ENROLLED SENATE
BILL NO. 12

BY: FORD of the SENATE

and

PAULK of the HOUSE

AN ACT RELATING TO INTOXICATING LIQUORS; AMENDING 37 O.S. 1981, SECTIONS 511, AS LAST AMENDED BY SECTION 2, CHAPTER 195, O.S.L. 1985 AND 537, AS LAST AMENDED BY SECTION 4, CHAPTER 3, O.S.L. 1989 (37 O.S. SUPP. 1990, SECTIONS 511 AND 537), WHICH RELATE TO THE ALCOHOLIC BEVERAGE CONTROL ACT; REMOVING RESTRICTIONS FROM LICENSING CERTAIN PERSONS; PROHIBITING CERTAIN EMPLOYEES FROM INVOLVEMENT IN THE ALCOHOLIC BEVERAGE BUSINESS; PROVIDING EXCEPTION; ALLOWING WHOLESALE LICENSEE TO SELL OR DELIVER SPIRITS OR WINE TO CERTAIN LICENSEES ON CERTAIN ELECTION DAYS; PROVIDING FOR CODIFICATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 37 O.S. 1981, Section 511, as last amended by Section 2, Chapter 195, O.S.L. 1985 (37 O.S. Supp. 1990, Section 511), is amended to read as follows:

Section 511. A. No member of the Alcoholic Beverage Laws Enforcement Commission, Director, Assistant Director, or employee of the ABLE Commission shall be appointed or serve who has been convicted of a felony or of any violation of any federal or state law relating to alcoholic beverages. No member of the ABLE Commission, Director, Assistant Director, or employee of the ABLE Commission shall directly or indirectly, individually or as a member of a partnership, or as a shareholder of a corporation, have any interest whatsoever in the manufacture, sale or distribution of alcoholic beverages, nor receive any compensation or profit therefrom, nor have any interest, directly or indirectly, in any business authorized by a license issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title. The holding of membership or elective or appointed office in fraternal organizations which obtain mixed beverage or bottle club licenses shall not be considered to be engagement in the alcoholic beverage business. No member of the ABLE Commission,

Director, Assistant Director, or employee of the ABLE Commission shall solicit or accept any gift, gratuity, emolument, or employment from any person subject to the provisions of the Oklahoma Alcoholic Beverage Control Act, or from any officer, agent or employee thereof, nor solicit, request from or recommend, directly or indirectly, to any such person or to any officer, agent or employee thereof, the appointment of any person to any place or position, and every such person, and every officer, agent or employee thereof, is hereby forbidden to offer to any member of the ABLE Commission, the Director, Assistant Director, or to any employee of the ABLE Commission, any gift, gratuity, emolument or employment. No member of the ABLE Commission, Director, Assistant Director, or employee of the ABLE Commission shall accept employment within the liquor industry for any holder of a license issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act, or represent, directly or indirectly, any such licensee in any proceedings before the Director or the ABLE Commission within two (2) years following his separation from the ABLE Commission. Violation of any provision of this subsection shall constitute a misdemeanor. In addition to the penal provisions, any person convicted shall be immediately removed from the office or position he holds.

B. No license of any kind shall be granted to or retained by any person or any partnership containing any partner who is related to any member of the ABLE Commission or to the Director or Assistant Director by affinity or consanguinity within the third degree. No member of the ABLE Commission nor the Director or Assistant Director shall be entitled to receive any compensation or other monies from the State of Oklahoma while a license is held in violation of the provisions of this subsection.

C. It shall be unlawful for any member of the ABLE Commission, the Director, Assistant Director, any inspector, attorney or other agent or employee of the ABLE Commission, to actively participate, as a candidate or otherwise, in any political campaign held in this state. Nor shall any such member of the ABLE Commission, Director, Assistant Director, or other agent or employee of the ABLE Commission lend, expend or contribute any money, funds, property or other thing of value, or use his official position, for the purpose of securing the nomination or election or the defeat of any candidate for public office in the State of Oklahoma. Any person who shall violate the provisions of this subsection shall, upon conviction, be fined not less than Two Thousand Five Hundred Dollars ($2,500.00) nor more than Five Thousand Dollars ($5,000.00), or imprisoned in the county jail for not more than one (1) year, or both such fine and imprisonment. Any person found guilty of violating the provisions of this subsection shall, in addition to the criminal penalty imposed herein, be discharged from the office or position he holds upon conviction and shall not be rehired to any state position.

D. If the voters of a county in which a state lodge is located approve sale of alcoholic beverages by the individual drink for on-premises consumption, then such sale of alcoholic beverages on the premises of such lodge shall be authorized if a license for such sale, issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act, is obtained. Provided, further, that a bottle club may be licensed on the premises of a state lodge located in a county where sale of alcoholic beverages by the individual drink for on-premises consumption is not authorized.

E. The provisions of subsection D of this section shall not prohibit the state or a political subdivision of the state from leasing a public building or facility to a person who obtains a mixed beverage license, bottle club license, special event license, contracts for the services of a licensed caterer, or subleases the

building or facility to a person who obtains a mixed beverage license, bottle club license, special event license or contracts for the services of a licensed caterer.

F. Provided, that nothing in this section shall prohibit the sale of alcoholic beverage legally confiscated as provided by law.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 511A of Title 37, unless there is created a duplication in numbering, reads as follows:

A. All employees of the State of Oklahoma and its political subdivisions are hereby permitted to obtain licenses from the Alcoholic Beverage Laws Enforcement Commission and to be involved in the alcoholic beverage business unless such involvement and licensing is prohibited by this section or otherwise prohibited by law.

B. The following officers and employees of the State of Oklahoma and its political subdivisions are hereby prohibited from engaging in the alcoholic beverage business:

1. All judges, district attorneys, assistant district attorneys and any public official who sits in a judicial capacity with jurisdiction over the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title;

2. All employees certified as peace officers engaging in law enforcement activities; and

3. All employees of the Oklahoma Tax Commission who engage in the auditing, enforcement and collection of alcoholic beverage taxes.

C. The holding of membership or elective or appointed office in fraternal organizations which obtain mixed beverage or bottle club licenses by employees of the state or a political subdivision shall not be considered to be engagement in the alcoholic beverage business.

SECTION 3. AMENDATORY 37 O.S. 1981, Section 537, as last amended by Section 4, Chapter 3, O.S.L. 1989 (37 O.S. Supp. 1990, Section 537), is amended to read as follows:

Section 537. A. No person shall:

1. Knowingly sell, deliver, or furnish alcoholic beverages to any person under twenty-one (21) years of age;

2. Sell, deliver or knowingly furnish alcoholic beverages to an intoxicated person or to any person who has been adjudged insane or mentally deficient;

3. Open a retail container or consume alcoholic beverages on the premises of a retail package store;

4. Import into this state, except as provided for in the Oklahoma Alcoholic Beverage Control Act, any alcoholic beverages; provided, that nothing herein shall prohibit the importation or possession for personal use of not more than one (1) liter of alcoholic beverages upon which the Oklahoma excise tax is delinquent;

5. Receive, possess, or use any alcoholic beverage in violation of the provisions of the Oklahoma Alcoholic Beverage Control Act;

6. Transport into, within, or through this state more than one (1) liter of alcoholic beverages upon which the Oklahoma excise tax has not been paid unless the person accompanying or in charge of the vehicle transporting same shall have in his possession a true copy of a bill of lading, invoice, manifest or other document particularly identifying the alcoholic beverages being transported and showing the name and address of the consignor and consignee;

7. Knowingly transport in any vehicle upon a public highway, street or alley any alcoholic beverage except in the original container which shall not have been opened and the seal upon which shall not have been broken and from which the original cap or cork shall not have been removed, unless the opened container be in the rear trunk or rear compartment, which shall include the spare tire

compartment in a vehicle commonly known as a station wagon and panel truck, or any outside compartment which is not accessible to the driver or any other person in said vehicle while it is in motion;

8. Drink intoxicating liquor in public except on the premises of a licensee of the Alcoholic Beverage Laws Enforcement Commission who is authorized to sell or serve alcoholic beverages by the individual drink or be intoxicated in a public place. This provision shall be cumulative and in addition to existing law;

9. Forcibly resist lawful arrest, or by physical contact interfere with an investigation of any infringement of the Oklahoma Alcoholic Beverage Control Act or with any lawful search or seizure being made by an inspector or agent of the ABLE Commission, when such person knows or should know that such acts are being performed by a state, county, or municipal officer, inspector or agent of the ABLE Commission;

10. Manufacture, duplicate, counterfeit or in any way imitate any bottle club membership card required to be issued by the ABLE Commission without the permission of said Commission;

11. Consume or possess alcoholic beverages on the licensed premises of a bottle club unless such person possesses a valid membership card for that club issued by the club; or

12. Knowingly possess any bottle club membership card required to be issued by the ABLE Commission, which has been manufactured, counterfeited, imitated or in any way duplicated without the permission of said Commission.

B. No licensee of the ABLE Commission shall:

1. Receive, possess, or sell any alcoholic beverage except as authorized by the Oklahoma Alcoholic Beverage Control Act and by the license or permit which he holds;

2. Employ any person under the age of twenty-one (21) in the selling or handling of alcoholic beverages. Provided, that a mixed beverage, caterer, special event or bottle club licensee may employ servers who are eighteen (18) years of age or older, except in designated bar or lounge areas;

3. Give any alcoholic beverage as a prize, premium or consideration for any lottery, game of chance or skill or any type of competition;

4. Advertise or offer "happy hours" or any other means or inducements to stimulate the consumption of alcoholic beverages including:

a. deliver more than two drinks to one person at one time;

b. sell or offer to sell to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the public;

c. sell or offer to sell to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public;

d. sell or offer to sell drinks to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the public;

e. increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week; or

f. encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes.

Provided that the provisions of this paragraph shall not prohibit the advertising or offering of food or entertainment in licensed establishments;

5. Permit or allow any patron or person to exit the licensed premises with an open container of any alcoholic beverage. Provided, that this prohibition shall not be applicable to closed original containers of alcoholic beverages which are carried from the licensed premises of a bottle club by a patron, closed original wine containers removed from the premises of restaurants, hotels, and motels, or to closed original containers of alcoholic beverages transported to and from the place of business of a licensed caterer by the caterer or his employee; or

6. Serve or sell alcoholic beverages with an expired license issued by the ABLE Commission.

C. No package store licensee shall:

1. Purchase or receive any alcoholic beverage other than from a person holding a brewer, wholesaler or Class B wholesaler license issued pursuant to the Oklahoma Alcoholic Beverage Control Act;

2. Suffer or permit any retail container to be opened, or any alcoholic beverage to be consumed, on his licensed premises;

3. Sell, or keep package store premises open for the purpose of selling, any alcoholic beverages at any hour other than between the hours of 10:00 a.m. and 9:00 p.m. Monday through Saturday; provided, that no such sales shall be made, or package store premises be allowed to remain open for the purpose of making such sales, on the day of any General, Primary, Runoff Primary or Special Election while the polls are open whether on a national, state, county or city election or on New Year's Day, Memorial Day, the Fourth of July, Labor Day, Veterans Day, Thanksgiving Day or Christmas Day;

4. Operate a retail package store unless such store shall be located in a city or town having a population in excess of two hundred (200) according to the latest Federal Decennial Census;

5. Sell any alcoholic beverage on credit; provided that acceptance by a retail liquor store of a cash or debit card, or a nationally recognized credit card, in lieu of actual cash payment does not constitute the extension of credit; provided further, as used in this section:

a. "cash or debit card" means any instrument or device whether known as a debit card or by any other name, issued with or without fee by an issuer for the use of the cardholder in depositing, obtaining or transferring funds from a consumer banking electronic facility,

b. "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit which is accepted by over one hundred (100) merchants;

6. Offer or furnish any prize, premium, gift or similar inducement to a consumer in connection with the sale of alcoholic beverage;

7. Permit any person under twenty-one (21) years of age to enter into, remain within or loiter about the premises of his licensed premises; or

8. Pay for alcoholic beverages by a check or draft which is dishonored by the drawee when presented to such drawee for payment; and the ABLE Commission may cancel or suspend the license of any retailer who has given a check or draft, as maker or endorser, which is so dishonored upon presentation.

D. No wholesaler licensee shall:

1. Sell or deliver any amount of spirits or wines to any package store licensee on Saturday or Sunday; or

2. Sell or deliver any amount of spirits or wines to any package store licensee on New Year's Day, Memorial Day, the Fourth of July, Labor Day, Veterans Day, Thanksgiving Day or Christmas Day.

E. No mixed beverage licensee shall:

1. Purchase or receive any alcoholic beverage other than from a person holding a wholesaler or Class B wholesaler license issued pursuant to the Oklahoma Alcoholic Beverage Control Act;

2. Transport alcoholic beverages from the place of purchase to his licensed premises unless said licensee also holds a private carrier license issued by the ABLE Commission;

3. Use or allow the use of any mark or label on a container of alcoholic beverage which is kept for sale which does not clearly and precisely indicate the nature of the contents or which might deceive or conceal the nature, composition, quantity, age or quality of such beverage;

4. Keep or knowingly permit any alcoholic beverage to be kept, brought or consumed on his licensed premises which is not allowed to be sold or served upon such premises; or

5. Allow any person under twenty-one (21) years of age to enter into, remain within or loiter about the designated bar area of the licensed premises.

F. No bottle club licensee shall:

1. Use or allow the use of any mark or label on a container of alcoholic beverage which does not clearly and precisely indicate the nature of the contents or which might deceive or conceal the nature, composition, quantity, age or quality of any such beverage;

2. Act as an agent for any bottle club member and purchase any alcoholic beverage for said member;

3. Use or allow the use of any pool system of storage or purchase of alcoholic beverages;

4. Allow any person to enter or remain in the designated bar or lounge area of the club unless that person possesses a valid membership card for that club issued by the club;

5. Sell any alcoholic beverage;

6. Deliver or furnish to any club member any alcoholic beverage that does not belong to said member;

7. Serve alcoholic beverages to any person who does not possess a valid membership card for that club issued by the club;

8. Issue a membership card for the club to a person under twenty-one (21) years of age; or

9. Allow any person under twenty-one (21) years of age to enter into, remain within or loiter about the designated bar area of the licensed premises.

G. No special event or caterer licensee shall:

1. Purchase or receive any alcoholic beverage other than from a person holding a wholesaler or Class B wholesaler license issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act; or

2. Transport alcoholic beverages from the place of purchase to his licensed premises unless said licensee also holds a private carrier license issued by the ABLE Commission.

H. No person operating a cafe, restaurant, club, or any place of recreation shall permit any person to be drunk or intoxicated in said place of business.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.