

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 1872

BY: SEIKEL

AS INTRODUCED

AN ACT RELATING TO INTOXICATING LIQUORS; AMENDING 37 O.S. 1991, SECTIONS 518.1, 521, 523, 532, 534, 553 AND 594.1, WHICH RELATE TO THE OKLAHOMA ALCOHOLIC BEVERAGE CONTROL ACT; AUTHORIZING CERTAIN LICENSES TO PURCHASE ALCOHOLIC BEVERAGES FROM PACKAGE STORES; MODIFYING AUTHORITY GRANTED UNDER PACKAGE STORE LICENSE; LIMITING NUMBER OF PACKAGE STORE LICENSES WHICH MAY BE ISSUED IN MUNICIPALITIES; LIMITING NUMBER OF MIXED BEVERAGE LICENSES WHICH MAY BE ISSUED IN CERTAIN COUNTIES; PROVIDING THAT CERTAIN BOTTLE CLUBS HAVE PREFERENCE IN PROCURING MIXED BEVERAGE LICENSE AFTER AFFIRMATIVE VOTE OF THE PEOPLE; SPECIFYING METHOD OF DETERMINATION OF POPULATION; REQUIRING ALCOHOLIC BEVERAGE LAWS ENFORCEMENT COMMISSION TO PUBLISH CERTAIN NOTICE; IMPOSING NONREFUNDABLE APPLICATION FEE; SPECIFYING CERTAIN LICENSING PROCEDURES AND METHOD OF SELECTING CERTAIN APPLICANT; REQUIRING COMPLIANCE WITH CERTAIN RULES AND PAYMENT OF LICENSE FEE; PROVIDING PROCEDURES FOR CONTINUANCE OF LICENSED BUSINESS; MAKING CERTAIN PROVISIONS RETROACTIVE TO CERTAIN DATE; SPECIFYING ENTITIES TO WHICH CERTAIN PROVISIONS DO NOT APPLY; REQUIRING CERTAIN ENTITIES TO KEEP RECEIPTS OF FOOD AND BEVERAGE FOR THREE-

MONTH PERIOD UNDER CERTAIN CONDITIONS; DELETING CERTAIN PROVISIONS RELATING TO THE NATURE OF CERTAIN LICENSES; DELETING CERTAIN PROVISIONS RELATING TO TRANSFER OR CONTINUANCE OF LICENSE; PROVIDING THAT LICENSE BE TRANSFERABLE UNDER CERTAIN CONDITIONS; REQUIRING CERTAIN PAYMENT OF PROCEEDS OF CERTAIN SALE BE MADE TO ABLE COMMISSION; MODIFYING ENTITIES TO WHICH LICENSED PACKAGE STORES MAY MAKE SALES OF ALCOHOLIC BEVERAGES; INCREASING EXCISE TAX RATES ON SPIRITS, LIGHT WINE, WINE AND SPARKLING WINE; MODIFYING CERTAIN PROVISION RELATING TO CONSTRUCTION OF EXCISE TAX IMPOSITION; LIMITING SIZES OF CONTAINERS OF ALCOHOLIC BEVERAGES STOCKED IN AND SOLD BY MEANS OF MINI-BARS; REPEALING 37 O.S. 1991, SECTIONS 576, 577, 578, 579, 580, 581, 581.1, 582, 583, 584, 585, 586 AND 587, WHICH RELATE TO GROSS RECEIPTS TAXES, MIXED BEVERAGE TAX PERMITS AND IDENTIFICATION STAMPS AND PROCEDURES RELATED THERETO AND TO REFILLING ALCOHOLIC BEVERAGE CONTAINERS; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 37 O.S. 1991, Section 518.1, is amended to read as follows:

Section 518.1 All holders of a mixed beverage, caterer, special event, or airline/railroad beverage license shall purchase alcoholic beverages only from a licensed wholesaler ~~or~~, Class B wholesaler, or package store.

A wholesaler or Class B wholesaler may deliver such products to licensees authorized to sell alcoholic beverages for on-premises consumption. Provided such licensees may pick up alcoholic beverage orders if they hold a private carrier license issued by the Alcoholic Beverage Laws Enforcement Commission.

SECTION 2. AMENDATORY 37 O.S. 1991, Section 521, is amended to read as follows:

Section 521. A. A brewer license shall authorize the holder thereof: To manufacture, bottle, package, and store beer on licensed premises; to sell beer in this state to holders of Class B wholesaler licenses and retail licenses and to sell beer out of this state to qualified persons.

B. A distiller license shall authorize the holder thereof: To manufacture, bottle, package, and store spirits on licensed premises; to sell spirits in this state to licensed wholesalers and manufacturers only; to sell spirits out of this state to qualified persons; to purchase from licensed distillers and rectifiers in this state, and import spirits from without this state for manufacturing purposes in accordance with federal laws and regulations.

C. A winemaker license shall authorize the holder thereof: To manufacture (including such mixing, blending and cellar treatment as authorized by federal law), bottle, package, and store on licensed premises wine containing not more than twenty-four percent (24%) alcohol by volume; to sell wine in this state to licensed wholesalers and manufacturers only; to sell wine out of this state to qualified persons; to purchase from licensed winemakers, distillers and rectifiers in this state, and to import into this state wine, brandy and fruit spirits for use in manufacturing in accordance with federal laws and regulations.

D. A rectifier license shall authorize the holder thereof: To rectify spirits and wines, bottle, package, and store same on the licensed premises; to sell spirits and wines in this state to

licensed wholesalers and manufacturers only; to sell spirits and wines out of this state to qualified persons; to purchase from licensed manufacturers in this state; and to import into this state for manufacturing purposes spirits and wines in accordance with federal laws and regulations.

E. A wholesaler license shall authorize the holder thereof: To purchase and import into this state spirits and wines from persons authorized to sell same who are the holders of a nonresident seller license, and their agents who are the holders of manufacturers agent licenses; to purchase spirits and wines from licensed distillers, rectifiers, winemakers and wholesalers in this state; to sell spirits and wines in retail containers in this state to retailers, mixed beverage, caterer, special event, hotel beverage or airline/railroad beverage licensees; to sell spirits and wines in containers with a capacity of less than one-twentieth (1/20) gallon in full case lots and in the original unbroken case to hotel beverage or airline/railroad beverage licensees only; to sell spirits and wines to wholesalers authorized to sell same; and to sell spirits and wines out of this state to qualified persons. Wholesalers shall be authorized to place such signs outside their place of business as are required by Acts of Congress and by such laws and regulations promulgated under such Acts.

A wholesaler license shall authorize the holder thereof to operate a single bonded warehouse with a single central office together with delivery facilities at a location in this state only at the principal place of business for which the wholesaler license was granted.

F. A Class B wholesaler license shall authorize the holder thereof: To purchase and import into this state beer from persons authorized to sell same who are the holders of nonresident seller licenses, and their agents who are the holders of manufacturers agent licenses to purchase beer from licensed brewers and Class B

wholesalers in this state; to sell in retail containers to retailers, mixed beverage, caterer, special event, hotel beverage and airline/railroad beverage licensees in this state, beer which has been unloaded and stored at the holder's self-owned or leased and self-operated warehouse facilities for a period of at least twenty-four (24) hours before such sale; and to sell beer in this state to Class B wholesalers and out of this state to qualified persons, including federal instrumentalities and voluntary associations of military personnel on federal enclaves in this state over which this state has ceded jurisdiction.

G. A package store license shall authorize the holder thereof: To purchase alcoholic beverages in retail containers with a capacity of more than one-twentieth (1/20) gallon from the holder of a brewer, wholesaler or Class B wholesaler license and to sell same on the licensed premises in such containers to consumers for off-premises consumption only ~~and not for resale to consumers at retail~~ and to holders of mixed beverage, caterer, special event and airline/railroad beverage licenses; provided, all alcoholic beverages are to be sold at ordinary room temperature. No package store licensee may purchase or sell alcoholic beverages in retail containers with a capacity of less than one-twentieth (1/20) gallon.

H. A mixed beverage license shall authorize the holder thereof: To purchase alcoholic beverages in retail containers with a capacity of more than one-twentieth (1/20) gallon from the holder of a wholesaler ~~or~~, Class B wholesaler or package store license and to sell, offer for sale and possess mixed beverages for on-premises consumption only. Sales and service of mixed beverages by holders of mixed beverage licenses shall be limited to the licensed premises of said licensee unless the holder of the mixed beverage license also obtains a caterer license. A mixed beverage license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has

been authorized. A separate license shall be required for each place of business. No mixed beverage license shall be issued for any place of business functioning as a motion picture theater, as defined by Section 506 of this title.

I. A bottle club license shall authorize the holder thereof: To store, possess and mix alcoholic beverages belonging to members of the club and to serve such alcoholic beverages for on-premises consumption to club members. A bottle club license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has not been authorized. A separate license shall be required for each place of business.

J. A caterer license shall authorize the holder thereof: To sell mixed beverages for on-premises consumption incidental to the sale or distribution of food at particular functions, occasions, or events which are temporary in nature. A caterer license shall not be issued in lieu of a mixed beverage license. A caterer license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A separate license shall be required for each place of business.

K. A special event license shall authorize the holder thereof: To sell and distribute mixed beverages for consumption on the premises for which the license has been issued for a period not to exceed ten (10) consecutive days. A special event license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized.

L. A hotel beverage license shall authorize the holder thereof: To sell or serve alcoholic beverages in 50 milliliter spirits, 187 milliliter wine, and 12-ounce malt beverage containers which are distributed from a hotel room mini-bar. A hotel beverage license

shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A hotel beverage license shall only be issued to a hotel or motel as defined by Section 506 of this title which is also the holder of a mixed beverage license. Provided, that application may be made simultaneously for both such licenses. A separate license shall be required for each place of business.

M. An airline/railroad beverage license shall authorize the holder thereof: To sell or serve alcoholic beverages in or from any size container on a commercial passenger airplane or railroad operated in compliance with a valid license, permit or certificate issued under the authority of the United States or this state, even though the airplane or train, in the course of its travel, may cross an area in which the sale of alcoholic beverages by the individual drink is not authorized and to store alcoholic beverages in sealed containers of any size at any airport or station regularly served by the licensee, in accordance with rules and regulations promulgated by the Alcoholic Beverage Laws Enforcement Commission. Alcoholic beverages purchased by the holder of an airline/railroad license from the holder of a wholesaler license shall be presumed to be purchased for consumption outside the State of Oklahoma or in interstate commerce, and shall be exempt from the excise tax provided for in Section 553 of this title.

N. An agent license shall authorize the holder thereof: To represent only the holders of licenses within this state, other than retailers, authorized to sell alcoholic beverages to retail dealers in Oklahoma, and to solicit and to take orders for the purchase of alcoholic beverages from retailers including licensees authorized to sell alcoholic beverages by the individual drink for on-premises consumption. Such license shall be issued only to agents and employees of the holder of a license under the Oklahoma Alcoholic

Beverage Control Act, Section 501 et seq. of this title but no such license shall be required of an employee making sales of alcoholic beverages on licensed premises of his principal. No person holding an agent license shall be entitled to a manufacturers agent license.

O. An employee license shall authorize the holder thereof: To work in a brewery, distillery, winery, package store, mixed beverage establishment, bottle club, or any establishment where alcohol, alcoholic beverage, wine or beer is made, blended, rectified, sold, mixed, or served. Persons employed by a mixed beverage licensee or a bottle club who do not participate in the service, mixing, or sale of mixed beverages shall not be required to have an employee license. Provided, however, that a manager employed by a mixed beverage licensee or a bottle club shall be required to have an employee license whether or not said manager participates in the service, mixing or sale of mixed beverages. Applicants for an employee license must have a health card issued by the county in which they are employed, if the county issues such a card. Employees of special event, caterer or airline/railroad beverage licensees shall not be required to obtain an employee license. Persons employed by a hotel licensee who participate in the stocking of hotel room mini-bars or in the handling of alcoholic beverages to be placed in such devices shall be required to have an employee license.

P. An industrial license may be issued to persons desiring to import, transport, and use alcohol for the following purposes:

1. Manufacture of patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;

2. Manufacture of extracts, syrups, condiments, and food products; and

3. For use in scientific, chemical, mechanical, industrial, and medicinal products and purposes.

No other provisions of the Oklahoma Alcoholic Beverage Control Act shall apply to alcohol intended for industrial, medical, mechanical, or scientific use.

Any person receiving alcohol under authority of an industrial license who shall use, permit, or cause same to be used for purposes other than authorized purposes specified above, and all such alcohol, shall be liable to all provisions of the Oklahoma Alcoholic Beverage Control Act, including payment of tax thereon.

No provisions of the Oklahoma Alcoholic Beverage Control Act shall apply to alcohol withdrawn by any person free of federal tax under a tax-free permit issued by the United States government, if such alcohol is received, stored, and used as authorized by federal laws.

Q. A carrier license may be issued to any common carrier operating under a certificate of convenience and necessity issued by any duly authorized federal or state regulatory agency. Such license shall authorize the holder thereof to transport alcoholic beverages into, within, and out of this state under such terms, conditions, limitations, and restrictions as the ABLE Commission may prescribe by order issuing such license and by regulations.

R. A private carrier license may be issued to any carrier other than a common carrier described in subsection P of this section. Such license shall authorize the holder thereof to transport alcoholic beverages into, within, or out of this state under such terms, conditions, limitations, and restrictions as the ABLE Commission may prescribe by order issuing such license and by regulations. No carrier license or private carrier license shall be required of licensed brewers, distillers, winemakers, rectifiers, wholesalers, or Class B wholesalers, to transport alcoholic beverages from the place of purchase or acquisition to the licensed premises of such licensees and from such licensed premises to the licensed premises of the purchaser in vehicles owned or leased by

such licensee when such transportation is for a lawful purpose and not for hire.

No carrier license or private carrier license shall be required of the holder of a package store, mixed beverage, caterer, special event, hotel beverage or airline/railroad license to pick up alcoholic beverage orders from the licensee's wholesaler or Class B wholesaler from whom they are purchased, and to transport such alcoholic beverages from the place of purchase or acquisition to the licensed premise of such licensee in vehicles owned or under the control of such licensee or a licensed employee of such licensee under such terms, conditions, limitations and restrictions as the ABLE Commission may prescribe.

S. A bonded warehouse license shall authorize the holder thereof: To receive and store alcoholic beverages for the holders of storage licenses on the licensed premises of the bonded warehouse licensee. No goods, wares or merchandise other than alcoholic beverages may be stored in the same bonded warehouse with alcoholic beverages. The holder of a bonded warehouse license shall furnish and file with the ABLE Commission a bond running to all bailors of alcoholic beverages under proper storage licenses and their assignees (including mortgagees or other bona fide lienholders) conditioned upon faithful performance of the terms and conditions of such bailments.

T. A storage license may be issued to a holder of a brewer, distiller, winemaker, rectifier, wholesaler, Class B wholesaler, nonresident seller, package store, mixed beverage, caterer, or hotel beverage license, and shall authorize the holder thereof: To store alcoholic beverages in a public warehouse holding a bonded warehouse license, and no goods, wares or merchandise other than alcoholic beverages may be stored in the same warehouse with alcoholic beverages in private warehouses owned or leased and operated by such licensees elsewhere than on their licensed premises. Provided, that

a storage license issued to a Class B wholesaler shall permit the storage of light beer and permit the sale and delivery to retailers from the premises covered by such license. Provided further, that any licensee who is the holder of both a mixed beverage license and a caterer license or a mixed beverage license and a hotel beverage license who is issued a storage license shall store all inventories of alcoholic beverages either on the premises of the mixed beverage establishment or in the warehouse.

U. No bonded warehouse license or storage license shall be issued for any location that is not within the boundaries of an incorporated city or town of a population of two hundred (200) or more, according to the last preceding Federal Decennial Census.

V. A sacramental wine supplier license shall authorize the holder thereof: To sell, ship or deliver sacramental wine to any religious corporation or society of this state holding a valid exemption from taxation issued pursuant to Section 501(a) of the Internal Revenue Code, 1986, 26 U.S.C., Section 501(a), and listed as an exempt organization in Section 501(c) (3) of the Internal Revenue Code, 1986, of the United States, as amended, 26 U.S.C., Section 501(c) (3).

SECTION 3. AMENDATORY 37 O.S. 1991, Section 523, is amended to read as follows:

Section 523. A. No license provided for in the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title, shall be issued except pursuant to an application filed with the Alcoholic Beverage Laws Enforcement Commission. The ABLE Commission may, however, provide for a form of simplified application for renewal of license. Payment of the prescribed fee shall accompany each application for a license.

B. Every applicant for an original license, except applicants for an employee, special event or airline/railroad beverage license, shall also furnish the following:

1. A tax receipt proving payment of ad valorem taxes, including real and personal taxes, or furnish to the ABLE Commission satisfactory evidence that no taxes are due or delinquent;

2. A certificate of zoning issued by the municipality in which the applicant proposes to locate the applicant's principal place of business under the license, or by the county if said principal place of business is located outside the incorporated limits of a municipality, certifying that the applicant's proposed location and use thereof comply with all municipal zoning ordinances or county zoning regulations if applicable;

3. A certificate issued by the municipality in which the applicant proposes to locate the applicant's principal place of business under the license, or by the county if said principal place of business is located outside the incorporated limits of a municipality, certifying that the applicant's existing or proposed operations under the license comply with all municipal or county fire codes, safety codes, or health codes, if applicable; and

4. Authorization, on forms furnished by the ABLE Commission, for complete investigation of the applicant's current financial status as it relates to the application for a license, including but not limited to access to bank accounts, loan agreements, and financial statements.

C. The certificates required by paragraphs 2 and 3 of subsection B of this section shall be signed by the mayor of the municipality or the chairman of the board of county commissioners issuing same, unless the municipality, by ordinance, or the county designates some other officer or entity to issue the certificates. Applications for such certificates shall be in writing and shall contain information in such detail as the municipality or county may reasonably require describing the location and nature of operations to be conducted under the ABLE license. Municipalities and counties

shall be required to act on all applications for such certificates within twenty (20) days of receipt of the written application.

D. Municipalities and counties may grant conditional certificates for premises proposed for licensed operations for which construction, modification, or alteration is not completed. Conditional certificates shall indicate that the proposed premises will comply with the municipal or county zoning, fire, safety, and health codes. The granting of conditional certificates shall not relieve the applicant of the duty of obtaining the certificates required by paragraphs 2 and 3 of subsection B of this section after completion of the construction, modification, or alteration.

E. A municipality or county shall issue the certificates required by paragraphs 2 and 3 of subsection B of this section within ten (10) days after all final inspections are completed.

Thereafter if a licensee fails to maintain compliance with municipal or county zoning ordinances and codes, the mayor or chairman of the board of county commissioners or ~~their~~ his designee, shall forthwith notify the ABLE Commission in writing setting forth details of the noncompliance.

F. Upon issuance of any license, the ABLE Commission shall furnish the Oklahoma Tax Commission with a list of such licenses.

G. In the event of denial of an application for a license, the ABLE Commission shall refund to the applicant the amount of the tendered fee, less ten percent (10%), which it shall retain as cost of processing the application.

H. Any licensee, except an employee licensee, who fails to renew his license prior to the expiration date of said license shall be subject to a late renewal penalty as provided by ABLE Commission rules and regulations. Further, any licensee, except an employee licensee, who fails to renew his license within sixty (60) days of the expiration of said license shall be required to submit a new license application. An employee licensee who fails to renew prior

to the expiration of the license shall be required to submit a new license application; provided, however, that under no circumstances shall any licensee, including an employee licensee, whose license to serve or sell alcoholic beverages has expired, continue to serve or sell alcoholic beverages.

I. The maximum number of package store licenses to be issued pursuant to this section in incorporated municipalities, shall be not more than one license for each seven thousand two hundred (7,200) inhabitants of the county or counties in which the municipality is located or major fraction thereof.

J. The maximum number of mixed beverage licenses to be issued pursuant to this section, in counties in which the sale of alcoholic beverages by the individual drink is authorized, shall be not more than one license for each two thousand nine hundred (2,900) inhabitants of the county or major fraction thereof.

K. All bottle clubs existing in counties in which the sale of alcoholic beverages by the individual drink has not been authorized on the effective date of this act shall have preference in procuring a mixed beverage license if the voters of that county vote to allow the sale of alcoholic beverages by the individual drink; provided, the number of mixed beverage licenses in such counties shall be not more than one license per two thousand nine hundred (2,900) inhabitants of the county or major fraction thereof.

L. For purposes of this section, the number of inhabitants of each county or incorporated municipality shall be determined by the latest Federal Decennial Census; however, if the ABLE Commission determines that the population of a county or incorporated municipality has increased, the Commission may substitute a more accurate population figure for purposes of this section.

M. If the ABLE Commission determines that a municipality or county is eligible for additional licenses because of an increase in population in the county, the Commission shall publish in a legal

newspaper of the county, as defined by Section 106 of Title 25 of the Oklahoma Statutes, notice that new original licenses may be issued. If there is no legal newspaper in a county, the notice shall be published in a legal newspaper which is published in an adjoining county of the state and which has general circulation in the county or municipality which is to receive additional licenses. The notice shall be published at least once a week for two (2) successive weeks. The notice shall set forth the type or types of licenses to be issued and the date, time, manner and place of acceptance of applications for the licenses. Each application for the license shall be accompanied by a nonrefundable fee of Five Hundred Dollars (\$500.00). The Commission shall make a determination of those applicants that are eligible to be holders of licenses pursuant to the Oklahoma Alcoholic Beverages Control Act. The Commission shall devise a random method of selecting one applicant, for each license being made available, to receive the license. The applicant shall comply with all applicable laws and ABLE Commission rules for making a formal application for licensing and shall pay the appropriate fee provided in Section 518 of this title.

N. Subsections I, J, and K of this section shall not be construed to prevent any licensee holding a valid license upon the effective date of this act, or his transferee, from continuing the licensed business or from renewing his license, subject to compliance with the Oklahoma Alcoholic Beverage Control Act and ABLE Commission regulations, notwithstanding that the continuance or renewal may result in an excess over the maximum number of licenses permitted by this section. This subsection shall be retroactive when passed to an effective date of January 3, 1992.

O. Subsections I, J, and K of this section shall not apply to:

1. Hotels or motels with seventy-five or more guestroom accommodations;

2. Restaurants doing sixty-five percent (65%) or more of gross sales in food; provided, if the ABLE Commission has reason to believe that a restaurant qualifying under the sixty-five percent (65%) gross food receipts provision has fallen beneath the aforementioned percentage, the ABLE Commission may require that the restaurant in question keep total receipts of food and beverage for a three-month probationary period; or

3. Service organizations or fraternal beneficiary societies which are exempt under Section 501(c) (8), (10) or (19) of the Internal Revenue Code.

SECTION 4. AMENDATORY 37 O.S. 1991, Section 532, is amended to read as follows:

~~Section 532. Any license issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act shall be a purely personal privilege. It shall not constitute property nor be subject to attachment, garnishment, or execution, or be alienable or transferable, either voluntarily or involuntarily; nor shall it descend by the laws of descent and distribution, but shall cease upon the death of the licensee; provided, however, that the Alcoholic Beverage Laws Enforcement Commission, under such regulations and subject to such restrictions as it may prescribe, may permit the executors or administrators of the estate of any deceased licensee, or the trustees of an insolvent or bankrupt licensee, or the legal guardian of a licensee who has been adjudged to be incompetent or insane, to exercise the privileges under any license held by him for such period as the ABLE Commission may deem equitable during the administration of the deceased or bankrupt licensee's estate, but not to exceed two (2) years. A. A license for a specified location shall be transferable for an amount agreed upon between the current licensee, the executors or administrators of the estate of any deceased licensee, the trustee of an insolvent or bankrupt licensee, or the legal guardian of an incompetent or~~

insane licensee and a prospective buyer of the location, subject to the following conditions:

1. The current licensee is in good standing with the Alcoholic Beverage Laws Enforcement Commission;

2. The license is transferred within the county of its origin;

3. The prospective buyer meets all ABLE Commission requirements for the granting of a license; and

4. Ten percent (10%) of the agreed purchase price of the license shall be deducted and paid directly to the ABLE Commission.

B. A license may not be transferred to a new location, except upon application to the ABLE Commission and endorsement on the license by the ABLE Commission showing the new location. An application for transfer of license shall be accompanied by a certificate reflecting, as to the proposed new location, compliance with municipal zoning ordinances or county zoning regulations and municipal or county fire, safety and health codes as required by Section 523 of this title. A mixed beverage or bottle club licensee who transfers his license to a new location shall pay a transfer fee of One Hundred Dollars (\$100.00) to the ABLE Commission.

SECTION 5. AMENDATORY 37 O.S. 1991, Section 534, is amended to read as follows:

Section 534. A. No package store license shall be issued for premises unless said premises are separated from premises on which any other goods, wares or merchandise are sold or services are rendered by nontransparent walls which may be broken by a passageway to which the public is not admitted. Provided, it shall be unlawful for any person or persons to take any alcoholic beverage from such store through said passageway for the purpose of selling, reselling, or delivering in connection with the sale of said alcoholic beverage. Such licenses shall apply only to the premises described in the application. No person may own any interest in more than one package store. For the purpose only of establishing whether or not

a person owns an interest in more than one package store license, the spouse of any person or partner and any person having a beneficial interest in any package store shall be deemed to be a partner in said package store. A beneficial interest shall be any interest that benefits from any sales or profits of said package store.

B. Package stores licensed under the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title, may sell only alcoholic beverages in retail containers as defined in Section 506 of this title, in the original package to consumers at retail for consumption off the premises and to holders of mixed beverage, caterer, special event, and airline/railroad beverage licenses. Provided, all alcoholic beverages are to be sold at ordinary room temperature. All retail sales shall be made on the licensed premises and all deliveries off the premises, at retail, of intoxicating liquor or beer are hereby prohibited.

SECTION 6. AMENDATORY 37 O.S. 1991, Section 553, is amended to read as follows:

Section 553. A. An excise tax is hereby levied and imposed upon all alcoholic beverages imported or manufactured, for sale, use or distribution, or used or possessed in this state, at the following rates:

1. ~~One Dollar and forty-seven cents (\$1.47)~~ Two Dollars and twenty-four cents (\$2.24) per liter, and a proportionate rate on fractions thereof, on each liter of spirits;

2. ~~Nineteen cents (\$0.19)~~ Seventy-three cents (\$0.73) per liter, and a proportionate rate on fractions thereof, on each liter of light wine;

3. ~~Thirty-seven cents (\$0.37)~~ One Dollar and eleven cents (\$1.11) per liter, and a proportionate rate on fractions thereof, on each liter of wine containing more than fourteen percent (14%) of alcohol by volume;

4. ~~Fifty-five cents (\$0.55)~~ One Dollar and twenty-four cents (\$1.24) per liter, and a proportionate rate on fractions thereof, on each liter of sparkling wine; and

5. Twelve Dollars and fifty cents (\$12.50) per barrel (thirty-one (31) wine gallons) and a proportionate rate on portions thereof, on each barrel of beer.

B. The excise tax levied on alcoholic beverages except beer under subsection A of this section shall be paid as follows:

1. Payment of the excise tax levied by this section with respect to all alcoholic beverages, other than beer, shall be made by the person shipping the same into Oklahoma, or in the case of direct imports from foreign countries by the importer, or in the case of alcoholic beverages manufactured in Oklahoma by the first seller thereof;

2. On and after January 1, 1981, the due and payable excise tax levied by this section shall be made by tax returns filed with the Oklahoma Tax Commission. The tax returns shall be made under oath by the person liable for the tax on forms prescribed and provided by the Oklahoma Tax Commission and shall be accompanied by payment of the taxes due and any additional sums due as provided by this section. Invoices describing all alcoholic beverages as described in this section which are shipped into this state or which are first sold in this state shall be delivered to the Oklahoma Tax Commission and to the Alcoholic Beverage Laws Enforcement Commission immediately following shipment of liquors into the state or delivery to the first purchaser. Tax returns and payment of excise tax and other sums due shall be delivered to the Oklahoma Tax Commission no later than the tenth day of the month immediately succeeding the month of shipment, importation or first sale of the alcoholic beverages as provided in paragraph 1 of this subsection;

3. All tax returns required to be filed during the twelve-month period beginning January 1, 1981, shall be accompanied by payment of

the excise tax due plus an additional payment in the amount of twenty percent (20%) of said tax. Up to ten percent (10%) of the total payments made during said period may be made in the form of revenue stamps previously purchased pursuant to Section 540 of this title; and

4. On and after February 1, 1982, each person required to file a tax return pursuant to this section shall remit the excise tax due, less an amount not to exceed two percent (2%) of the total of the additional payments made by said taxpayer pursuant to paragraph 3 of this subsection. The total of said deductions shall not exceed the total of the additional payments made pursuant to paragraph 3 of this subsection. Up to ten percent (10%) of each tax payment made under this subsection may be made in the form of revenue stamps previously purchased pursuant to Section 540 of this title.

C. For the purpose of collecting and remitting the excise tax imposed under this section, the person liable for such tax is hereby declared to be the agent of the state for such purposes, and his failure to remit or pay such tax to the state, when due, shall constitute embezzlement, and any such person, upon conviction, shall be punished as provided by law for the embezzlement of public funds.

D. Nothing herein shall be construed to impose an additional excise tax on intoxicating beverages held in inventory by wholesalers ~~and~~ ~~retailers~~ upon which the excise tax was paid prior to the effective date of ~~any excise tax increase~~ this act.

SECTION 7. AMENDATORY 37 O.S. 1991, Section 594.1, is amended to read as follows:

Section 594.1 A. A hotel beverage license may be issued to a hotel or motel as defined by Section 506 of ~~Title 37 of the Oklahoma Statutes~~ this title which is also the holder of a mixed beverage license. Provided, that application may be made simultaneously for both such licenses.

B. The Alcoholic Beverage Laws Enforcement Commission shall adopt rules and regulations governing the application for and the issuance of hotel beverage licenses.

C. Notwithstanding any other provision of this act, a hotel may sell alcoholic beverages to its registered guests by means of a mini-bar located in the guestrooms of those registered guests provided that:

1. Access to any mini-bar shall only be by a key, magnetic card or similar device;

2. Access to a mini-bar in a particular guestroom is provided, whether by furnishing a key, magnetic card or similar device only to a registered guest over twenty-one (21) years of age registered to stay in the guestroom;

3. The licensee shall verify that each registered guest to whom a key, magnetic card or similar device to access a mini-bar is to be provided is over twenty-one (21) years of age; ~~and~~

4. Containers of alcoholic beverages stocked in mini-bars and sold by means of mini-bars shall be limited to the sizes authorized for sale pursuant to a hotel beverage license, as provided in Section 521 of this title; and

5. All employees handling the alcoholic beverages to be placed in the mini-bar possess an employee license issued by the ABLE Commission.

SECTION 8. REPEALER 37 O.S. 1991, Sections 576, 577, 578, 579, 580, 581, 581.1, 582, 583, 584, 585, 586 and 587, are hereby repealed.

SECTION 9. 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.

