

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2529

By: Steidley

AS INTRODUCED

An Act relating to intoxicating liquors; authorizing limited liability companies to obtain certain licenses issued by the ABLE Commission; providing procedure to application for license; requiring certain information; providing for certain fee; requiring certain notification; amending 37 O.S. 1991, Sections 527.1, 528 and 597, which relate to the Oklahoma Alcoholic Beverage Control Act; providing grounds for refusal, revocation and suspension of licenses issued to limited liability companies; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 518.3 of Title 37, unless there is created a duplication in numbering, reads as follows:

A. Any limited liability company, formed as provided for in the Oklahoma Limited Liability Company Act, may apply for any license authorized to be issued pursuant to the Oklahoma Alcoholic Beverage Control Act except an employee license. When applying for a license

the limited liability company shall submit to the Alcoholic Beverage Laws Enforcement Commission the following:

1. A certificate from the office of the Secretary of State stating that the articles of organization of the limited liability company have been filed with the office of Secretary of State; and

2. A list of all managers of the limited liability company and their addresses, or if the articles of organization or operating agreement of the limited liability company provide that the company shall be managed without designated managers, a list of all members and their addresses.

B. A limited liability licensee shall notify the ABLE Commission in writing of any change in the managers of said limited liability company or in the principal managers of premises licensed to said limited liability company and shall pay a fee of One Hundred Dollars (\$100.00) for each notification of change. Provided, service organizations which are exempt under Section 501(c)(8), (10), or (14) of the Internal Revenue Code shall be exempt from said fee.

SECTION 2. AMENDATORY 37 O.S. 1991, Section 527.1, is amended to read as follows:

Section 527.1 The Alcoholic Beverage Laws Enforcement Commission shall refuse to issue a mixed beverage, bottle club, or caterer license, either on an original application or a renewal application, if it has reasonable grounds to believe and finds any of the following to be true:

1. That the applicant is under twenty-one (21) years of age;

2. That the applicant or any general or limited partner has been convicted of a felony;

3. That the applicant, in the case of a corporation, has an officer or director who has been convicted of a felony;

4. That the applicant, in the case of a limited liability company, has a manager who has been convicted of a felony;

5. That the applicant has made false statements to the ABLE Commission;

~~5.~~ 6. That the applicant is not the legitimate owner of the business for which a license is sought or that other persons have undisclosed ownership interests in the business;

~~6.~~ 7. That the applicant or any partner, within twelve (12) months after being issued a license, either on an original application or a renewal application, has violated any provision of the Oklahoma Alcoholic Beverage Control Act or regulation of the ABLE Commission issued pursuant hereto. Provided, however, that if the ABLE Commission, during said twelve-month period, has suspended any license sought to be renewed, such renewal application may be approved if the term of the suspension has been completed and the applicant has complied with any special conditions imposed in connection with the suspension;

~~7.~~ 8. That the applicant is not the real party in interest, or intends to carry on the business authorized by the license as the agent of another; or

~~8.~~ 9. That the applicant is a person who appoints or is a law enforcement official or is an employee of the ABLE Commission or of the Director.

SECTION 3. AMENDATORY 37 O.S. 1991, Section 528, is amended to read as follows:

Section 528. A. Any license issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title, by order of the Alcoholic Beverage Laws Enforcement Commission, after due notice and hearing, may be revoked or suspended if the ABLE Commission finds or has grounds to believe that the licensee has:

1. Violated any rule adopted by the ABLE Commission;
2. Procured a license through fraud, or misrepresentation, or concealment of a material fact;

3. Made any false representation or statement to the ABLE Commission in order to prevent or induce action by the ABLE Commission;

4. Maintained an unsanitary establishment or has supplied impure or otherwise deleterious beverages or food;

5. Stored, possessed, mixed or served on the premises of a bottle club any alcoholic beverage upon which the tax levied by Section 553 of this title has not been paid as provided for in the Oklahoma Alcoholic Beverage Control Act, in a county of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has not been authorized;

6. Misrepresented to a customer or the public any alcoholic beverage sold by the licensee; or

7. Had any permit or license issued by the Oklahoma Tax Commission and required by the Oklahoma Alcoholic Beverage Control Act, suspended or revoked by the Tax Commission.

B. The ABLE Commission may revoke or suspend the license of any mixed beverage, caterer or bottle club licensee if the ABLE Commission finds or has grounds to believe that such licensee:

1. Has acted as an agent of a manufacturer or wholesaler of alcoholic beverages;

2. Is a manufacturer or wholesaler of alcoholic beverages;

3. Has borrowed money or property or accepted gratuities or rebates from a manufacturer or wholesaler of alcoholic beverages;

4. Has obtained the use of equipment from any manufacturer or wholesaler of alcoholic beverages or any agent thereof;

5. Has violated any of the provisions of the Oklahoma Alcoholic Beverage Control Act for which mandatory revocation or suspension is not required; or

6. Has been convicted on or after July 1, 1985, of a violation of any state or federal law relating to alcoholic beverage for which mandatory revocation or suspension is not required.

C. The ABLE Commission shall revoke the license of any licensee if said Commission finds:

1. That the licensee knowingly sold alcoholic beverages or allowed such beverages to be sold, delivered or furnished to any person under the age of twenty-one (21) years, or to any person visibly intoxicated or adjudged insane or mentally deficient;

2. That the licensee, any general or limited partner of the licensee, or in the case of a corporation, an officer or director of the corporation, or in the case of a limited liability company, a manager, has been convicted of a felony;

3. That, in the case of a wholesaler, Class B wholesaler, or retail package store licensee, the holder of the license or any member of a general or limited partnership which is the holder of such a license, has been convicted of a prohibitory law relating to the sale, manufacture, or transportation of alcoholic beverages which constitutes a felony or a misdemeanor.

D. If the ABLE Commission shall find by a preponderance of the evidence as in civil cases that the holder of a package store license has knowingly sold any alcoholic beverage to any person under the age of twenty-one (21) years, after a public hearing it shall revoke said license and no discretion as to said revocation shall be exercised by the ABLE Commission.

E. The ABLE Commission shall have the authority to promulgate rules and regulations to establish a penalty schedule for violations of any provision of the Oklahoma Alcoholic Beverage Control Act or any rule or regulation of the ABLE Commission. The schedule shall provide for suspension or revocation of any license for major and minor violations as determined by the ABLE Commission. Penalties shall be increasingly severe with each violation by a licensee.

Provided, that for a fourth major violation by a licensee within a twenty-four-month period the penalty shall be mandatory revocation of license. The twenty-four-month period shall be calculated from

the date of the most recent violation as set forth in an order signed by the Director or the designee of the Director.

F. The ABLE Commission may impose a monetary penalty in lieu of or in addition to suspension of a license. The amount of fine for a major violation shall be computed by multiplying the proposed number of days of the suspension period by One Hundred Dollars (\$100.00). The amount of fine for a minor violation shall be computed by multiplying the number of days of the proposed suspension period by Fifty Dollars (\$50.00).

G. The failure of any licensee to pay a fine or serve a suspension imposed by the ABLE Commission shall result in the revocation of the license of said licensee.

H. If the ABLE Commission finds that public health, safety or welfare require emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceeding for revocation or other action, pursuant to the provisions of Section 314 of Title 75 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 37 O.S. 1991, Section 597, is amended to read as follows:

Section 597. An airline/railroad beverage license may be issued to any corporation or limited liability company operating a commercial airline or railroad in or through this state. Application and payment of the license fee shall be made directly to the Alcoholic Beverage Laws Enforcement Commission.

SECTION 5. This act shall become effective July 1, 1994.

SECTION 6. 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.

