

ENROLLED HOUSE
BILL NO. 1418

By: Fields of the House

and

Hobson of the Senate

An Act relating to intoxicating liquors; amending 37 O.S. 1991, Sections 163.7, as last amended by Section 1, Chapter 258, O.S.L. 1994 and 231, as amended by Section 4, Chapter 91, O.S.L. 1992 (37 O.S. Supp. 1994, Sections 163.7 and 231), which relate to nonintoxicating beverages; authorizing any retail dealer that brews nonintoxicating beverages to sell the beverages at certain locations; defining term; amending 37 O.S. 1991, Sections 506, as amended by Section 2, Chapter 361, O.S.L. 1994, 517, 523, 523.1, as amended by Section 8, Chapter 361, O.S.L. 1994, 527, as amended by Section 2, Chapter 180, O.S.L. 1993, 527.1, as amended by Section 9, Chapter 361, O.S.L. 1994, 535, as amended by Section 12, Chapter 361, O.S.L. 1994, 535.1, as amended by Section 13, Chapter 361, O.S.L. 1994, 535.2, as amended by Section 14, Chapter 361, O.S.L. 1994 and 594 (37 O.S. Supp. 1994, Sections 506, 523.1, 527, 527.1, 535, 535.1 and 535.2), which relate to the Oklahoma Alcoholic Beverage Control Act; adding definition; modifying definition; modifying procedure for notification by ABLE Commission of application for license; removing certain requirements for notification of results of action on license; expanding information required to be furnished by applicant for original license; expanding notification requirements for corporate licensees; requiring payment of certain fee by corporation; providing procedures for licensure of limited liability companies; requiring limited liability company to submit certain information when applying for license; providing notification requirements for limited liability companies; requiring payment of certain fee by limited liability company; authorizing certain action by ABLE Commission; requiring notification of such action; making failure to remove manager or member grounds for revocation or suspension of license in certain circumstances; prohibiting certain persons from serving as manager or being a member of a limited liability company; modifying grounds for refusal to issue certain licenses; expanding list of persons who are prohibited from having financial interest or certain financial dealings with certain licensees; expanding list of persons who are prohibited from having interest in certain licensees; authorizing caterer licenses for limited liability companies and partnerships;

providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 37 O.S. 1991, Section 163.7, as last amended by Section 1, Chapter 258, O.S.L. 1994 (37 O.S. Supp. 1994, Section 163.7), is amended to read as follows:

Section 163.7 In addition to the excise tax payable under this act, and in addition to the license required to be procured from the judge of the district court, the following permits shall be required and the following annual license taxes shall be payable to the Oklahoma Tax Commission with respect to nonintoxicating beverages:

1. Manufacturers: Every manufacturer, located and doing business in this state, shall, before commencing the manufacture of nonintoxicating beverages, obtain from the Oklahoma Tax Commission a permit to engage in such manufacture. As a condition of the issuance of this permit such manufacturer shall pay to the Tax Commission a license tax of Five Hundred Dollars (\$500.00), which shall cover a one-year period commencing with the effective date of such permit. This permit must be renewed and the license tax paid annually thereafter at the expiration of the preceding permit and license tax period. Each and every other manufacturer of such beverages, coming within the provisions of this act, shall before selling or offering for sale such beverages within the State of Oklahoma, qualify with the Secretary of State of the State of Oklahoma for a permit to do business within the State of Oklahoma and, after so qualifying, shall obtain a permit or license from the Oklahoma Tax Commission and, in addition to any other license, taxes or fees, pay therefor a license tax of Five Hundred Dollars (\$500.00), which shall cover a one-year period commencing with the effective date of such permit. The said permit or license shall be for the privilege of doing business in Oklahoma as a manufacturer of nonintoxicating beverages. The permit must be renewed and the license tax paid annually thereafter at the expiration of the preceding permit and license tax period. The receipt of payment of such permit or license shall be on file with the Oklahoma Tax Commission before such manufacturer shall sell, or offer for sale, such beverages to any person within the State of Oklahoma.

Every manufacturer, located and doing business outside the State of Oklahoma, desiring to pay the excise tax on sales to retail dealers, as provided for in this act, shall procure annually a permit and pay annually the license tax required of wholesalers, as provided for under this section. The payment of such fee shall be in addition to the payment of the license fee or tax in the sum of Five Hundred Dollars (\$500.00) as provided herein;

2. Wholesalers: Every wholesaler, located and doing business in this state, must annually obtain from the Oklahoma Tax Commission a permit to sell nonintoxicating beverages. As a condition of the issuance of this permit such wholesaler shall pay to the Tax Commission a license fee of Two Hundred Fifty Dollars (\$250.00) which shall cover a one-year period commencing with the effective date of such permit. The permit must be renewed and the license tax paid annually thereafter at the expiration of the preceding permit and license tax period.

Every wholesaler, located and doing business outside the state desiring to pay the excise tax on sales to retail dealers, as provided for in this act, shall procure annually a permit and pay annually the license tax required of wholesalers located and doing business in this state.

Wholesalers within this state shall be required to secure an annual permit and must pay an annual license tax for each city or

incorporated town from which deliveries of nonintoxicating beverages are made to retail dealers.

Permits issued to wholesalers shall not be transferable from one person to another person but shall be transferable from one location to another location; and

3. Retail Dealers: Every retail dealer shall, before offering nonintoxicating beverages for sale to the public, obtain from the Oklahoma Tax Commission a permit to engage in such sales, and shall pay to the Oklahoma Tax Commission, in advance of the issuance of said permit, the license tax, as follows:

- a. each retail dealer who sells nonintoxicating beverages, on draught and in original packages, for consumption on or off the premises, shall obtain a permit which shall be valid for a period of three (3) years and shall pay a license tax of Three Hundred Dollars (\$300.00),
- b. each retail dealer who sells such beverages in original packages only for consumption on or off the premises shall obtain a permit which shall be valid for a period of three (3) years and shall pay a license tax of One Hundred Fifty Dollars (\$150.00),
- c. each retail dealer who sells nonintoxicating beverages purchased from a licensed manufacturer or licensed wholesaler for consumption on or off the premises and who sells nonintoxicating beverages manufactured by said retail dealer for consumption on the premises shall obtain a permit which shall be valid for a period of three (3) years and shall pay a license fee of Four Hundred Fifty Dollars (\$450.00). Provided, a retail dealer licensed pursuant to this subparagraph shall not manufacture more than five thousand (5,000) barrels of nonintoxicating beverages per year. A retail dealer, that has obtained a permit pursuant to this subparagraph, may sell nonintoxicating beverages manufactured by the retail dealer, at any of the retail dealer's places of business, as defined in Section 163.8 of this title, or any other place owned and operated by an entity which has common owners with the licensed dealer, regardless of which place of business brews the beverage. "Common owners" means that the owners at each place or entity together own more than fifty percent (50%) of the interest in each place or entity that has a permit issued pursuant to this subparagraph. A retail dealer, that has obtained a permit pursuant to this subparagraph, may sell nonintoxicating beverages manufactured by the same retailer pursuant to special licenses issued pursuant to subparagraph d of this paragraph,
- d. special licenses, as provided, may be issued for the sum of Five Dollars (\$5.00) per day for each license; provided, that in the event any state or county fair association shall meet for more than five (5) days in any year, a special license for the sale of such beverages shall be issued for the sum of Twenty-five Dollars (\$25.00),
- e. each retail dealer who sells such beverages in original packages and not for consumption on the premises, shall obtain a permit which shall be valid for a period of three (3) years and shall pay a license tax of Thirty Dollars (\$30.00). It shall be

unlawful for such off-premise dealer to allow any bottle, can, or original package to be broken or opened, or to allow any of such nonintoxicating beverage to be consumed, in or upon the premises described in such permit,

- f. a permit issued prior to the effective date of this act shall be valid until it expires. Upon expiration of such permit, the retail dealer to whom such permit was issued may obtain a renewal permit which shall be valid for three (3) years or until expiration of the dealer's sales tax permit, whichever is earlier, after which a renewal permit shall be valid for three (3) years. The manner and prorated fee for renewals of less than three (3) years shall be prescribed by the Oklahoma Tax Commission, and
- g. a retail dealer who has obtained a permit pursuant to this paragraph and who ceases to offer nonintoxicating beverages for sale to the public shall be entitled to receive a refund of the permit fee from the Oklahoma Tax Commission prorated with respect to the amount of time remaining until expiration of the permit. The manner and prorated refund shall be prescribed by the Oklahoma Tax Commission.

SECTION 2. AMENDATORY 37 O.S. 1991, Section 231, as amended by Section 4, Chapter 91, O.S.L. 1992 (37 O.S. Supp. 1994, Section 231), is amended to read as follows:

Section 231. A. From and after sixty (60) days from the passage of this act, it shall be unlawful for any person, firm, corporation, or others associated therein or employed thereby, engaged in business as a brewer, importer, or wholesaler, or other holder of a basic permit from the United States Secretary of the Treasury, of nonintoxicating malt beverages, individually or through or by affiliates, subsidiaries, associates, agents, or stockholders, directly or indirectly, to do or cause to be done any of the following acts:

1. Acquire, hold, or own any interest in the permit, license, premises, or business of a retail dealer in nonintoxicating malt beverages.

2. Acquire, hold, or own any interest in the real or personal property owned, occupied, or used by a retail dealer in nonintoxicating malt beverages in the conduct of his business.

3. Furnish, give, rent, lend, or sell to a retail dealer in nonintoxicating malt beverages any equipment, fixture, outside signs, supplies, or other things having a real or substantial value. Provided that this paragraph shall not be construed to prohibit the furnishing of normal point of purchase advertising matter to such retail dealer in nonintoxicating malt beverages.

4. Pay or credit a retail dealer in nonintoxicating malt beverages for any advertising display or distribution service.

5. Guarantee or procure another to guarantee any loan or the payment of any financial obligation of a retail dealer in nonintoxicating malt beverages.

6. Extend credit to a retail dealer in nonintoxicating malt beverages.

7. Offer or give any bonus, premium, or compensation to an officer, employee, associate, relative, or representative of a retail dealer in nonintoxicating malt beverages.

8. Sell, offer for sale, or contract to sell to any retail dealer in nonintoxicating malt beverages any malt beverages on

consignment, or with the privilege of return, or on any basis other than a bona fide cash sale.

9. Use or employ any device or scheme to subsidize in any manner any retail dealer in nonintoxicating malt beverages.

10. Permit any retail dealer in nonintoxicating malt beverages to do for such brewer, importer, wholesaler, or other holder of a basic permit from the United States Secretary of the Treasury, of nonintoxicating malt beverages any of the above acts hereby made unlawful to be done on behalf of such retail dealer in nonintoxicating malt beverages.

B. The provisions of this section shall not preclude a retail dealer from manufacturing nonintoxicating beverages for consumption on the licensed premises of the retail dealer. As used in this subsection, "licensed premises" means any place of business, as defined by Section 163.8 of this title, for which a retail dealer has obtained a permit pursuant to subparagraph c of paragraph 3 of Section 163.7 of this title or any location for which a retail dealer has obtained a special license pursuant to subparagraph d of paragraph 3 of Section 163.7 of this title.

SECTION 3. AMENDATORY 37 O.S. 1991, Section 506, as amended by Section 2, Chapter 361, O.S.L. 1994 (37 O.S. Supp. 1994, Section 506), is amended to read as follows:

Section 506. When used in the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title, the following words and phrases shall have the following meaning:

1. "ABLE Commission" means the Alcoholic Beverage Laws Enforcement Commission.

2. "Alcohol" means and includes hydrated oxide of ethyl, ethyl alcohol, ethanol, or spirits of wine, from whatever source or by whatever process produced. It does not include wood alcohol or alcohol which has been denatured or produced as denatured in accordance with Acts of Congress and regulations promulgated thereunder.

3. "Alcoholic beverage" means alcohol, spirits, beer, and wine as those terms are defined herein and also includes every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by human beings, but does not include nonintoxicating beverages as that term is defined in Section 163.2 of this title.

4. "Applicant" means any individual, legal or commercial business entity, or any individual involved in any legal or commercial business entity allowed to hold any license issued in accordance with the Oklahoma Alcoholic Beverage Control Act.

5. "Beer" means any beverage containing more than three and two-tenths percent (3.2%) of alcohol by weight and obtained by the alcoholic fermentation of an infusion or decoction of barley, or other grain, malt or similar products. "Beer" may or may not contain hops or other vegetable products. "Beer" includes, among other things, beer, ale, stout, lager beer, porter and other malt or brewed liquors, but does not include sake, known as Japanese rice wine.

~~5.~~ 6. "Bottle club" means any establishment in a county which has not authorized the retail sale of alcoholic beverages by the individual drink, which is required to be licensed to keep, mix, and serve alcoholic beverages belonging to club members on club premises.

~~6.~~ 7. "Brewer" means any person who produces beer in this state.

~~7.~~ 8. "Class B wholesaler" means and includes any person doing any such acts or carrying on any such business that would require such person to obtain a Class B wholesaler license hereunder.

~~8.~~ 9. "Convicted" and "conviction" mean and include a finding of guilt resulting from a plea of guilty or nolo contendere, the decision of a court or magistrate or the verdict of a jury, irrespective of the pronouncement of judgment or the suspension thereof.

~~9.~~ 10. "Director" means the Director of the Alcoholic Beverage Laws Enforcement Commission under the supervision of said Commission.

~~10.~~ 11. "Distiller" means any person who produces spirits from any source or substance, or any person who brews or makes mash, wort, or wash, fit for distillation or for the production of spirits (except a person making or using such material in the authorized production of wine or beer, or the production of vinegar by fermentation), or any person who by any process separates alcoholic spirits from any fermented substance, or any person who, making or keeping mash, wort, or wash, has also in his possession or use a still.

~~11.~~ 12. "Hotel" or "motel" shall mean an establishment which is licensed to sell alcoholic beverages by the individual drink and which contains guestroom accommodations with respect to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of other legal relationships as between some occupants and the owner or operator thereof shall be immaterial.

~~12.~~ 13. "Legal newspaper" means a newspaper meeting the requisites of a newspaper for publication of legal notices as prescribed in Sections 101 through 114 of Title 25 of the Oklahoma Statutes.

~~13.~~ 14. "Licensee" means any person holding a license under the Oklahoma Alcoholic Beverage Control Act, and any agent, servant, or employee of such licensee while in the performance of any act or duty in connection with the licensed business or on the licensed premises.

~~14.~~ 15. "Light beer" means a nonintoxicating malt beverage controlled under this title.

~~15.~~ 16. "Light wine" means any wine containing not more than fourteen percent (14%) alcohol measured by volume at sixty (60) degrees Fahrenheit.

~~16.~~ 17. "Manufacturer's agent" means a salaried or commissioned salesman who sells to a wholesaler or Class B wholesaler only.

~~17.~~ 18. "Manufacturer" means a brewer, distiller, winemaker, rectifier, or bottler of any alcoholic beverage.

~~18.~~ 19. "Meals" means foods commonly ordered at lunch or dinner and at least part of which is cooked on the licensed premises and requires the use of dining implements for consumption. Provided, that the service of only food such as appetizers, sandwiches, salads or desserts shall not be considered "meals".

~~19.~~ 20. "Mini-bar" means a closed container, either refrigerated, in whole or in part, or nonrefrigerated, and access to the interior of which is (1) restricted by means of a locking device which requires the use of a key, magnetic card, or similar device, or (2) controlled at all times by the licensee.

~~20.~~ 21. "Mixed beverage cooler" means any beverage, by whatever name designated, consisting of an alcoholic beverage and fruit or vegetable juice, fruit or vegetable flavorings, dairy products or carbonated water containing more than one-half of one percent (1/2

of 1%) of alcohol measured by volume but not more than seven percent (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is packaged in a container not larger than three hundred seventy-five (375) milliliters. Such term shall include, but not be limited to, the beverage popularly known as a "wine cooler".

~~21.~~ 22. "Mixed beverages" means one or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage, beer and wine, caterer, or special event license.

~~22.~~ 23. "Motion picture theater" means a place where motion pictures are exhibited and to which the general public is admitted, but does not include a place where meals, as defined by this section, are served, if only persons over twenty-one (21) years of age are admitted.

~~23.~~ 24. "Retail salesman" means a salesman soliciting orders from and calling upon retail alcoholic beverage stores with regard to his product.

~~24.~~ 25. "Occupation" as used in connection with "occupation tax" means the sites occupied as the places of business of the manufacturers, wholesalers, Class B wholesalers, retailers, mixed beverage licensees, beer and wine licensees, bottle clubs, caterers, and special event licensees.

~~25.~~ 26. "Original package" means any container of alcoholic beverage filled and stamped or sealed by the manufacturer.

~~26.~~ 27. "Patron" means any person, customer, or visitor who is not employed by a licensee or who is not a licensee.

~~27.~~ 28. "Person" means ~~and includes~~ an individual, any type of partnership, corporation, or association, limited liability company or any individual involved in the legal structure of any such business entity.

~~28.~~ 29. "Premises" means the grounds and all buildings and appurtenances pertaining to the grounds including any adjacent premises if under the direct or indirect control of the licensee and the rooms and equipment under the control of the licensee and used in connection with or in furtherance of the business covered by a license. Provided that the ABLE Commission shall have the authority to designate areas to be excluded from the licensed premises solely for the purpose of:

- a. allowing the presence and consumption of alcoholic beverages, not bearing serially numbered identification stamps issued by the Oklahoma Tax Commission, by private parties which are closed to the general public, or
- b. allowing the services of a caterer serving alcoholic beverages provided by a private party.

This exception shall in no way limit the licensee's concurrent responsibility for any violations of this act occurring on the licensed premises.

~~29.~~ 30. "Rectifier" means any person who rectifies, purifies, or refines spirits or wines by any process (other than by original and continuous distillation, or original and continuous processing, from mash, wort, wash, or other substance, through continuous closed vessels and pipes, until the production thereof is complete), and any person who, without rectifying, purifying, or refining spirits, shall by mixing (except for immediate consumption on the premises where mixed) such spirits, wine, or other liquor with any material, manufactures any spurious, imitation, or compound liquors for sale, under the name of whiskey, brandy, rum, gin, wine, spirits, cordials, or any other name.

~~30.~~ 31. "Regulation" or "rule" means a formal rule of general application promulgated by the ABLE Commission as herein required.

~~31.~~ 32. "Retail container for spirits and wines" means an original package of a capacity not less than one-twentieth (1/20) gallon specified by the ABLE Commission in its regulations for the alcoholic beverage concerned, or an original package with a capacity of less than one-twentieth (1/20) gallon, referred to as miniatures.

~~32.~~ 33. "Retailer" means the holder of a Package Store License.

~~33.~~ 34. "Sale" means any transfer, exchange or barter in any manner or by any means whatsoever, and includes and means all sales made by any person, whether as principal, proprietor or as an agent, servant or employee. The term "sale" is also declared to be and include the use or consumption in this state of any alcoholic beverage obtained within or imported from without this state, upon which the excise tax levied by the Oklahoma Alcoholic Beverage Control Act has not been paid or exempted.

~~34.~~ 35. "Short order food" means food other than full meals including but not limited to sandwiches, soups, and salads. Provided that popcorn, chips, and other similar snack food shall not be considered "short order food".

~~35.~~ 36. "Sparkling wine" means champagne or any artificially carbonated wine.

~~36.~~ 37. "Spirits" means any beverage other than wine, beer or light beer, which contains more than one-half of one percent (1/2 of 1%) alcohol measured by volume and obtained by distillation, whether or not mixed with other substances in solution and includes those products known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and fortified wines and similar compounds; but shall not include any alcohol liquid completely denatured in accordance with the Acts of Congress and regulations pursuant thereto.

~~37.~~ 38. "Wholesaler" means and includes any person doing any such acts or carrying on any such business or businesses that would require such person to obtain a wholesaler's license or licenses hereunder.

~~38.~~ 39. "Wine" means and includes any beverage containing more than one-half of one percent (1/2 of 1%) alcohol by volume and not more than twenty-four percent (24%) alcohol by volume at sixty (60) degrees Fahrenheit obtained by the fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, and includes vermouth and sake, known as Japanese rice wine.

~~39.~~ 40. "Winemaker" means any person who produces wine.

~~40.~~ 41. "Oklahoma winemaker" means a business premises in Oklahoma licensed pursuant to the Oklahoma Alcoholic Beverage Control Act wherein wine is produced by the licensee who must be a resident of the state. The wine product fermented in said licensed premises shall be of grapes, berries and other fruits and vegetables imported into this state and processed herein or shall be of grapes, berries and other fruits and vegetables grown in Oklahoma.

Words in the plural include the singular, and vice versa, and words imparting the masculine gender include the feminine, as well as persons and licensees as defined in this section.

SECTION 4. AMENDATORY 37 O.S. 1991, Section 517, is amended to read as follows:

Section 517. All regulations and rules of the Alcoholic Beverage Laws Enforcement Commission shall be promulgated and filed pursuant to the provisions of the Administrative Procedures Act, Sections 301 through ~~326~~ 323 of Title 75 of the Oklahoma Statutes and also shall be filed with the Secretary of State and the State Librarian pursuant to the provisions of Sections 251 through 253 of

Title 75 of the Oklahoma Statutes. Copies of all regulations and rules shall be made available to each county clerk, district attorney, sheriff and chief of police in the state upon request. The ABLE Commission shall send a copy notice of ~~the application form filed by a person seeking~~ for a license to sell alcohol, alcoholic beverage, wine, or beer under the Oklahoma Alcoholic Beverage Control Act to the district attorney of the county wherein the premises is located at least fifteen (15) days prior to the approval or disapproval of said application. ~~The district attorney shall forthwith be notified of the results of the ABLE Commission's action when a person's license is renewed, suspended or revoked.~~

For any applicant for a license issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act whose place of business for which the license is being sought is located in a city or town, the ABLE Commission shall mail copies a notice of ~~the~~ application to the city or town, the sheriff of the county in which the city or town is located, and the district attorney of the county in which the city or town is located. The city or town ~~shall~~ may make recommendations on whether or not the applicant should be issued a license by the ABLE Commission within twenty (20) days after the date the copies of the application were mailed. ~~The city or town shall be notified of the results of the ABLE Commission's action when such a license is renewed, suspended or revoked.~~

For any applicant for a license issued pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act whose place of business for which the license is being sought is located outside of the incorporated boundaries of a city or town, the ABLE Commission shall mail copies a notice of ~~the~~ application to the board of county commissioners of the county in which the place of business is located, the sheriff of said county, and the district attorney of said county. The board of county commissioners shall make recommendations on whether or not the applicant should be issued a license by the ABLE Commission within twenty (20) days after the date the copies of the application were mailed. ~~The board of county commissioners shall be notified of the results of the ABLE Commission's action when such a license is renewed, suspended or revoked.~~

SECTION 5. 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 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; and

5. A deed, management agreement, purchasing agreement, or lease for a period of at least one (1) year to run concurrent with the license issuance.

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 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.

SECTION 6. AMENDATORY 37 O.S. 1991, Section 523.1, as amended by Section 8, Chapter 361, O.S.L. 1994 (37 O.S. Supp. 1994, Section 523.1), is amended to read as follows:

Section 523.1 A. Any corporation applying for a mixed beverage, beer and wine, caterer, or bottle club license shall submit to the Alcoholic Beverage Laws Enforcement Commission the following:

1. A certificate of good standing from the office of the Secretary of State;

2. A list of all corporate officers, directors, executive committee members or members of a similar governing body and their addresses; and

3. A list of all stockholders owning fifteen percent (15%) or more of the stock and their addresses.

B. A corporate licensee shall notify the ABLE Commission in writing of any change in the officers or directors of said corporation or in the principal managers of premises licensed to said corporation 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.

C. A corporate licensee shall notify the ABLE Commission any time a person, any type of partnership, limited liability company, or other entity acquires fifteen percent (15%) or more of the stock of said corporation. Such notification shall be within thirty (30) days of acquisition and the corporation shall pay a fee of One Hundred Dollars (\$100.00) for each notification of change.

D. The ABLE Commission may disapprove a change of officers, directors or principal managers or the acquisition of more than fifteen percent (15%) of the stock in a licensed corporation if the ABLE Commission feels that such change would materially affect the conditions under which the license was issued, such that the license would not have been issued had such change been in existence at the time of the original application. If such disapproval occurs, the ABLE Commission shall notify the licensee in writing and in the case of a publicly traded corporation, allow a reasonable time for the licensee to remove such officer, director or manager or for the stockholder to divest himself of any stock held in excess of fifteen percent (15%) of the stock. Provided that a reasonable time may not exceed a ninety-day period following notification of denial by the ABLE Commission. Failure to comply with the provisions of this subsection may result in revocation or suspension of such license.

E. Any person who was an officer or director or who has owned fifteen percent (15%) or more of the stock in a corporation which has been denied a license or had a license revoked or suspended pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act shall not own stock in any other corporation seeking a license pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act for a period of twelve (12) months from the date said license was revoked or suspended.

F. Any person who was a manager or a member of a limited liability company which has been denied a license or had a license revoked or suspended pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act shall not own stock in any corporation seeking a license pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act for a period of twelve (12) months from the date said license was revoked or suspended.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 523.2 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 Limited Liability Company Act, may apply for a beer and wine, bottle club, caterer, or mixed beverage license issued pursuant to the Oklahoma Alcoholic Beverage Control Act. Any limited liability company applying for a license shall submit to the Alcoholic Beverage Laws Enforcement Commission, the following:

1. A Certificate of Good Standing from the Office of the Secretary of State;
2. The Articles of Organization with all amendments and corrections filed with the Office of the Secretary of State with proof that same has been filed in accordance with the Limited Liability Company Act;
3. The name and address of the resident agent;
4. The name and address of the manager;
5. The operating agreement;
6. A current list of the full name, social security number, and address of each member; and
7. A copy of the issued Certificate of Membership Interest for each member.

B. A limited liability company licensee shall notify the ABLE Commission in writing of any change in the manager of the licensed company within thirty (30) days of said change and shall pay a fee of One Hundred Dollars (\$100.00) for each notification of change.

C. A limited liability company shall notify the ABLE Commission in writing any time a membership is assigned or members are added or disassociated within thirty (30) days of said change. The limited liability company shall pay a fee of One Hundred Dollars (\$100.00) for each notification of change.

D. The ABLE Commission may disapprove a change of manager or new membership in a licensed liability company if the ABLE Commission feels that such change would materially affect any conditions under which the license was issued, such that the license would not have been issued had such change been in existence at the time of the original application. If such disapproval occurs, the ABLE Commission shall notify the licensee in writing and allow a reasonable time for the licensee to remove such manager or for a member to be disassociated from the company. Provided that a reasonable time not exceed a ninety-day period following notification of denial by the ABLE Commission. Failure to comply with the provisions of this subsection may result in revocation or suspension of such license.

E. Any person who has been a licensee, a partner in a license, an officer, director or fifteen percent (15%) or more stockholder of a corporation holding a license revoked or suspended, pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act, shall not serve as a manager or be a member in a limited liability company seeking a license pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act for a period of twelve (12) months from the date said license was revoked or suspended.

F. Any person who has been a manager, member or participant in any business entity which was a manager or member of a limited liability company which has been denied a license or has a license revoked or suspended, pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act shall not serve as a manager or member in a limited liability company seeking a license pursuant to the provisions of the Oklahoma Alcoholic Beverage Control Act for a period of twelve (12) months from date said license was revoked or suspended.

G. Any person who has been convicted of a felony for which a pardon has not been granted shall not be elected as a manager or be a member of a limited liability company.

SECTION 8. AMENDATORY 37 O.S. 1991, Section 527, as amended by Section 2, Chapter 180, O.S.L. 1993 (37 O.S. Supp. 1994, Section 527), is amended to read as follows:

Section 527. The Alcoholic Beverage Laws Enforcement Commission shall refuse to issue a wholesaler, Class B wholesaler or package store 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 not a citizen of the United States or is not a qualified elector in this state, or has not been a continuous resident of this state for the ten (10) years next preceding the application for the license;

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

3. That the applicant or any partner, or spouse of the applicant or any partner, has been convicted of a felony;

4. That the applicant or any partner, or spouse of the applicant or any partner, has been convicted of a violation of any state or federal law relating to alcoholic beverages, has forfeited a bond while any charge of such violation was pending against him, nor may any license be granted for any purpose under the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of this title, to an Oklahoma resident, who has held or whose spouse has held a Federal Liquor Stamp in Oklahoma before the adoption of Article XXVII of the Oklahoma Constitution unless said Liquor Stamp was granted for supplying alcoholic beverages to a federal military installation, or was granted under this title;

5. That the applicant or any partner has, within twelve (12) months next preceding the date of the application, 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 has, during said twelve-month period, 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;

6. That the applicant is not of good moral character, or that the applicant is in the habit of using alcoholic beverages to excess, or is mentally incapacitated. Provided, that the record in any municipal court showing a conviction of violation of any municipal ordinances or state statutes involving moral character or public nuisance obtained after passage and approval of the Oklahoma Alcoholic Beverage Control Act shall be received in evidence by the ABLE Commission;

7. That the applicant does not own or have a written lease for at least a period of one (1) year ~~or~~ to run concurrent with the license term for the premises for which a license is sought;

8. That the applicant has, within twelve (12) months next preceding the date of application, been the holder of a license revoked for cause;

9. 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;

10. That the applicant, in the case of an application for renewal of any license, would not be eligible for such license on a first application;

11. 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;

12. That the proposed location of the licensed premises would violate a valid municipal nondiscriminatory zoning ordinance;

13. That, in the case of an application for a wholesaler license, or Class B wholesaler license, any manufacturer, including an officer, director or principal stockholder thereof, or any partner, has any financial interest in the business to be conducted under the license;

14. That the issuance of the license applied for would result in a violation of any provision of the Oklahoma Alcoholic Beverage Control Act;

15. That, in the case of an application for a wholesaler or Class B wholesaler license, the applicant or any partner, or spouse of the applicant or any partner, is the holder or partner of the holder of any other class of license issued under the provisions of the Oklahoma Alcoholic Beverage Control Act, other than an agent or employee license for employment by the applicant, or a storage license, bonded warehouse license, carrier license or private carrier license; or

16. That, in the case of an application for a package store license the applicant or any partner, or the spouse of the applicant or any partner, is the holder or partner of the holder, or employee of such holder of any other class of license issued under the provisions of the Oklahoma Alcoholic Beverage Control Act, other than a storage license or an employee license for the proposed licensed premises of the applicant or of a retail dealer's permit for the same location issued by the Oklahoma Tax Commission for the sale of nonintoxicating beverages for consumption on the premises as provided by Section 163.7 of this title.

SECTION 9. AMENDATORY 37 O.S. 1991, Section 527.1, as amended by Section 9, Chapter 361, O.S.L. 1994 (37 O.S. Supp. 1994, 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, beer and wine, 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, in the case of a natural person, is under twenty-one (21) years of age;

2. That the applicant, in the case of a corporation, has a stockholder who owns fifteen percent (15%) or more of the stock, officer, or director who is under twenty-one (21) years of age;

3. That the applicant, in the case of any type of partnership, has any partner who is under twenty-one (21) years of age;

4. That the applicant, in the case of a limited liability company, has a manager or member who is under twenty-one (21) years of age;

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

~~3.~~ 6. That the applicant, in the case of a corporation, has ~~an~~ a stockholder owning fifteen percent (15%) of the stock, officer or director who has been convicted of a felony;

~~4.~~ 7. That the applicant, in the case of a limited liability company, has a manager or a member who has been convicted of a felony;

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

~~5.~~ 9. 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.~~ 10. 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.~~ 11. 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.~~ 12. 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; or

13. That the applicant does not own or have a written lease for at least a period of one (1) year, to run concurrent with the license term for the premises for which a license is sought.

SECTION 10. AMENDATORY 37 O.S. 1991, Section 535, as amended by Section 12, Chapter 361, O.S.L. 1994 (37 O.S. Supp. 1994, Section 535), is amended to read as follows:

Section 535. It shall be unlawful for any manufacturer, wholesaler, Class B wholesaler, or person authorized to sell alcoholic beverages to a wholesaler, or any employee, officer, director, stockholder owning fifteen percent (15%) or more of the stock, any type of partner, manager, member or agent thereof, to directly or indirectly:

1. Have any financial interest in any premises upon which any alcoholic beverage or light beer is sold at retail or in any business connected with the retailing of alcoholic beverages or light beer as defined in Section 506 of this title;

2. Lend any money or other thing of value, or to make any gift or offer any gratuity, to any package store, mixed beverage, beer and wine or bottle club licensee or caterer;

3. Guarantee any loan or the repayment of any financial obligation of any retailer, mixed beverage, beer and wine or bottle club licensee or caterer;

4. Require any wholesaler, Class B wholesaler, retailer, mixed beverage, beer and wine licensee or caterer to purchase and dispose of any quota of alcoholic beverages, or to require any retailer to purchase any kind, type, size container, or brand of alcoholic beverages in order to obtain any other kind, type, size container, or brand of alcoholic beverages;

5. Sell to any retailer, mixed beverage, beer and wine licensee or caterer any alcoholic beverage on consignment, or upon condition, or with the privilege of return, or on any condition other than a bona fide sale; or

6. Extend credit to any retailer, other than holders of Federal Liquor Stamps on United States government reservations and installations, mixed beverage or beer and wine licensee or caterer other than a state lodge located in a county which has approved the retail sale of alcoholic beverages by the individual drink for on-premises consumption. The acceptance of a postdated check or draft or the failure to deposit for collection a current check or draft by the second banking day after receipt shall be deemed an

extension of credit. Violation of this subsection shall be grounds for suspension of the license.

SECTION 11. AMENDATORY 37 O.S. 1991, Section 535.1 , as amended by Section 13, Chapter 361, O.S.L. 1994 (37 O.S. Supp. 1994, Section 535.1), is amended to read as follows:

Section 535.1 No mixed beverage, beer and wine, caterer or bottle club licensee, partner in any type of partnership, manager or member of a limited liability company, officer, director or stockholder of any corporate licensee owning more than fifteen percent (15%) of the stock shall have any right, title, lien, claim or interest, financial or otherwise in, upon or to the premises, equipment, business or merchandise of any package store, manufacturer or wholesaler. The provisions of this section shall not prohibit a person who is an officer or director of a fraternal or veteran's organization which is a tax exempt organization under Section 501(c) (8), (10) or (19) of the Internal Revenue Code and which holds a license issued by the ABLE Commission from having a right, title, lien, claim, or interest in the premises, equipment, business, or merchandise of a package store.

SECTION 12. AMENDATORY 37 O.S. 1991, Section 535.2, as amended by Section 14, Chapter 361, O.S.L. 1994 (37 O.S. Supp. 1994, Section 535.2), is amended to read as follows:

Section 535.2 No manufacturer, wholesaler, partner in any type of partnership, manager or member of a limited liability company, or officer, director or stockholder of any nonresident seller or manufacturer licensee, owning more than fifteen percent (15%) of the stock shall have any right, title, claim or interest, financial or otherwise in, upon or to the premises, equipment, business or merchandise of any mixed beverage, beer and wine, caterer or bottle club licensee.

SECTION 13. AMENDATORY 37 O.S. 1991, Section 594, is amended to read as follows:

Section 594. A. A caterer license may be issued to any corporation, association ~~or~~, individual, or limited liability company, or any type of partnership for the purpose of sale, delivery or distribution of alcoholic beverages for on-premises consumption incidental to the sale or distribution of food.

B. The ABLE Commission shall adopt rules ~~and regulations~~ governing the application for and the issuance of caterer licenses.

C. The restrictions and regulations which apply to the sale of mixed beverages on the premises of a mixed beverage licensee also apply to the sale under the authority of a caterer license. Any act which if done on the premises of a mixed beverage licensee would be a ground for revocation or suspension of the mixed beverage license is a ground for revocation or suspension of a caterer license.

D. If the premises, where the event being catered is held, are already operating pursuant to another type of license issued by the ABLE Commission, the caterer and other said licensee shall both be responsible for the actions of the caterer and shall both be subject to penalties for violations, by the caterer, of the Oklahoma Alcoholic Beverage Control Act and any ~~regulations or~~ rules promulgated thereto.

E. A caterer licensee may not store alcoholic beverages unless said licensee has a storage license issued by the ABLE Commission.

SECTION 14. This act shall become effective September 1, 1995.

Passed the House of Representatives the 10th day of May, 1995.

Speaker of the House of
Representatives

Passed the Senate the 10th day of May, 1995.

President of the Senate