

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 297

By: Easley

COMMITTEE SUBSTITUTE

An Act relating to intoxicating liquors; amending 37 O.S. 2001, Sections 509, 514, 537.1, 539, 546 and 552, which relate to the Oklahoma Alcoholic Beverage Control Act; creating an Advisory Council on Charitable Games and Prevention of Youth Access to Tobacco; providing for appointment, terms, meetings, duties, and expenses; modifying the responsibilities of the Director; modifying the powers and duties of the Alcoholic Beverage Laws Enforcement Commission; requiring establishment of division; modifying authority for access to licensed establishments and specifying circumstances; providing for certain construction; deleting condition upon which license is issued; specifying procedures for search without warrant; modifying authority for free access to search licensed premises; modifying the manner in which certain information must be made available; updating references and making gender neutral; and providing an effective date.

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 506.2 of Title 37, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created An Advisory Council on Charitable Games and Prevention of Youth Access to Tobacco.

B. The voting membership of the Council shall consist of nine (9) members. Three members shall be appointed by the Governor, three members shall be appointed by the Speaker of the House of Representatives and three members shall be appointed by the President Pro Tempore of the Senate. The Governor, Speaker of the House of Representatives, and the President Pro Tempore of the Senate shall each appoint two (2) members knowledgeable of public

health issues and one (1) member knowledgeable of the charitable games industry.

C. Each initial appointment shall be designated by each appointing authority for progressive terms of one (1) through three (3) years so that only one term for members appointed by a single appointing authority expires each calendar year; subsequent appointments shall be for three-year terms. Members of the Advisory Council shall serve at the pleasure of and may be removed from office by the appointing authority.

D. Members shall continue to serve until their successors are appointed. Any vacancy shall be filled in the same manner as the original appointments.

E. Meetings of the Advisory Council shall be quarterly or as called by the chair or upon petition by a majority of the voting members. Five members of the Advisory Council shall constitute a quorum.

F. The Advisory Council shall elect a chair and a vice-chair from among its members.

G. The Advisory Council shall:

1. Have authority to recommend to the Alcoholic Beverage Laws Enforcement Commission rules regarding enforcement of the Oklahoma Charity Games Act and the Prevention of Youth Access to Tobacco Act;

2. Have the authority to make written recommendations to the Board on rules, enforcement or any other matter pertaining to the Oklahoma Charity Games Act or the Prevention of Youth Access to Tobacco Act, which have been concurred upon by at least a majority of the membership of the Council; and

3. Have the authority to provide a public forum for the discussion of issues it considers relevant to the Oklahoma Charity Games Act and the Prevention of Youth Access to Tobacco Act.

H. Council members shall serve without compensation but may be reimbursed expenses incurred in the performance of their duties, as

provided in the State Travel Reimbursement Act. The Council is authorized to utilize meeting space of the ABLE Commission and obtain administrative assistance from the Commission, as required.

SECTION 2. AMENDATORY 37 O.S. 2001, Section 509, is amended to read as follows:

Section 509. The Director shall employ an Assistant Director and inspectors, agents, clerks, stenographers, accountants, chemists and such other personnel as are necessary to properly enforce and administer this law. He or she shall require bonds in such instances and amounts as the Alcoholic Beverage Laws Enforcement Commission may direct. He or she shall be in direct charge of all records and if authorized by the ABLE Commission shall have the following duties and responsibilities:

A. Immediately upon the appointment and qualification of the Director, he or she shall become vested with the duties and powers of the management and control of the office of Director, and shall become vested with all duties and powers imposed upon him or her by any orders, rules and regulations as may be prescribed by the ABLE Commission, and in addition thereto shall have the following specific powers and duties:

1. To issue licenses provided for in the Oklahoma Alcoholic Beverage Control Act, ~~Section 502 et seq. of this title,~~ and to approve or reject any official bond required to be filed with the Director or the ABLE Commission;

2. To appoint and employ, supervise and discharge such personnel, clerical, skilled and semiskilled help, labor and other employees as may be determined necessary for the proper discharge of the duties of the office of Director, upon salary fixed and determined by the ABLE Commission and subject to all the rules and regulations that may be promulgated by the ABLE Commission. The Director and the ABLE Commission, in appointing and employing

personnel, shall give preference to honorably discharged members of the Armed Forces of the United States;

3. To conduct such investigations and make such reports as may be necessary to keep the ABLE Commission and members thereof advised concerning any violations of the provisions of the Oklahoma Alcoholic Beverage Control Act and make orders for its enforcement;

4. To make recommendations to the ABLE Commission concerning the suspension or revocation of any licenses, the levying of fines against licensees for violations of the provisions of the Oklahoma Alcoholic Beverage Control Act or regulations or rules of the ABLE Commission, or any action that should be filed or commenced against any official bond theretofore approved by the Director or the ABLE Commission;

5. To regularly inspect all places of business of licensees, brewers, distributors, winemakers, rectifiers, wholesalers, Class B wholesalers, industrial licensees, private carriers, bonded warehouses, and package stores, and all other persons, firms or corporations dealing in the manufacture, distribution, transportation, sale or service of alcoholic beverages under the provisions of the Oklahoma Alcoholic Beverage Control Act, and report to the ABLE Commission concerning any and all violations with ~~his~~ the Director's recommendation to the ABLE Commission for its determination. Such inspections shall be made during regular business hours on regular business days, pursuant to Section 514 of this title, and shall be limited to areas of the licensed premises where alcoholic beverages are stored, manufactured, sold, dispensed or served or areas of the licensed premises where there is probable cause to believe that alcoholic beverages are stored, manufactured, sold, dispensed or served;

6. To aid the enforcement authorities of this state or any county or municipality of the state, or federal government, in

prosecutions of violations of the Oklahoma Alcoholic Beverage Control Act;

7. To approve and pay claims for services of professional and clerical, skilled, semiskilled help, labor and other employees in the absence of the ABLE Commission, when the salaries and wages of such persons shall have been previously approved by the ABLE Commission; and

8. To enforce the provisions of the Prevention of Youth Access to Tobacco Act, ~~Sections 2 through 13 of this act,~~ including, but not limited to, the levying of administrative fines against persons violating the provisions of the Prevention of Youth Access to Tobacco Act, and to at least annually conduct random unannounced inspections at locations where tobacco products are sold or distributed and conduct targeted inspections at those locations which have been in violation of the provisions of the Prevention of Youth Access to Tobacco Act.

B. If a witness in attendance before the Director refuses without reasonable cause to be examined or to answer a legal or pertinent question, or to produce a book, record or paper when ordered to do so by the Director, the Director may apply to the judge of the district court of any county where such witness is in attendance, upon proof by affidavit of the fact, for a rule or order returnable in not less than two (2) nor more than five (5) days, directing such witness to show cause before the judge who made the order, or any other district judge of said county, why he or she should not be punished for contempt; upon the return of such order, the judge before whom the matter shall come for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard; and if the judge shall determine that such person has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record or paper which he or she was ordered to

bring or produce, he or she may punish the offender as for contempt of court and shall fix the penalty in any sum not less than Two Hundred Fifty Dollars (\$250.00) but not to exceed Five Hundred Dollars (\$500.00) or require him or her to serve a maximum of thirty (30) days in jail, or both.

C. Subpoenas shall be served and witness fees and mileage paid as in civil cases in the district court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Director shall be paid their fees and mileage by the Director out of funds appropriated to the ABLE Commission. Court cost in this contempt proceedings shall be paid as taxed by the court.

SECTION 3. AMENDATORY 37 O.S. 2001, Section 514, is amended to read as follows:

Section 514. The Alcoholic Beverage Laws Enforcement Commission shall have the following powers and duties:

1. To supervise, inspect, and regulate every phase of the business of manufacturing, importing, exporting, transporting, storing, selling, distributing, and possessing for the purpose of sale, all alcoholic beverages which shall be necessary and proper to carry out the purposes of the Oklahoma Alcoholic Beverage Control Act;

2. To promulgate rules and regulations, in the manner herein provided, to carry out the purposes of the Oklahoma Alcoholic Beverage Control Act;

3. To have the sole authority to issue any license provided for in the Oklahoma Alcoholic Beverage Control Act;

4. To refuse to issue any license provided for in the Oklahoma Alcoholic Beverage Control Act for cause provided for in said act;

5. To revoke or suspend, for cause after hearing, any license issued under the authority of the Oklahoma Alcoholic Beverage Control Act;

6. To prescribe the forms of applications for licenses and the information to be shown thereon, and of all reports which it deems necessary in administering the Oklahoma Alcoholic Beverage Control Act;

7. To fix standards, not in conflict with those prescribed by any law of this state or of the United States, to secure the use of proper ingredients and methods of manufacture and dispensing of alcoholic beverages;

8. To make seizures of alcoholic beverages manufactured, sold, possessed, imported, or transported in violation of the Oklahoma Alcoholic Beverage Control Act, and apply for the confiscation thereof whenever required by said act, and cooperate in the prosecution of offenders before any court of competent jurisdiction;

9. To submit to the Governor and members of the State Legislature annual or semiannual reports upon request of the Governor;

10. To inspect or cause to be inspected any premises where alcoholic beverages are manufactured, stored, distributed, sold, dispensed or served. Such inspections shall be conducted during regular business hours on business days and shall be limited to areas of the licensed premises where alcoholic beverages are stored, manufactured, sold, dispensed or served, or where there is probable cause to believe that alcoholic beverages are stored, manufactured, sold, dispensed or served. A search warrant issued by a court of competent jurisdiction shall be required for any entry and inspection by an agent or inspector of the ABLE Commission at any time other than during regular business hours on business days. If an agent or inspector of the ABLE Commission or a duly authorized representative of the Oklahoma Tax Commission desires to inspect books or records required by the Oklahoma Alcoholic Beverage Control Act or the rules of the ABLE Commission or the Tax Commission, such agent, inspector or representative shall give reasonable notice to

the licensee before the books and records are produced. Such agent or duly authorized representative shall not search office furniture, closets or other private belongings for books, records or other documents required by the Oklahoma Alcoholic Beverage Control Act without first obtaining a search warrant from a court of competent jurisdiction. If the notice is given and the records are not produced, the ABLE Commission may issue a subpoena duces tecum pursuant to paragraph 11 of this section;

11. In the conduct of any hearing authorized to be held by the ABLE Commission, to examine or cause to be examined, under oath, any person, and to examine or cause to be examined books and records of any licensee; to hear testimony and take proof material for the ABLE Commission's information and the discharge of its duties hereunder; to administer or cause to be administered oaths; and for any such purposes to issue subpoenas for the attendance of witnesses and the production of books or records which shall be effective in any part of the state; and any district court or any judge thereof, either in term or vacation, may by order duly entered require the attendance of witnesses and the production of relevant books or records subpoenaed by the ABLE Commission, and the court or judge may compel obedience to its or ~~his~~ the judge's order by proceedings for contempt;

12. To prescribe the kind and size of retail containers of alcoholic beverages other than beer which may be purchased, possessed and sold by a licensee;

13. To prescribe by regulations, in addition to those herein required, the kinds of records to be kept and reports to be rendered by licensees, and the information to be shown therein; provided, that the period for which all such records and reports be retained shall not be less than five (5) years;

14. To gather, compile and print such statistical data as may in the opinion of the ABLE Commission be needed or useful, and

prescribe charges or fees to be collected from any person or company to whom such data shall be provided. No reports shall contain sales information of either wholesalers, retailers, mixed beverage licensees, caterers or special event licensees by name or license number;

15. To educate persons employed by licensees to serve alcoholic beverages as to the provisions of Article XXVIII of the Oklahoma Constitution and the Oklahoma Alcoholic Beverage Control Act, with emphasis on recognizing and preventing intoxication and particular emphasis on those provisions prohibiting the serving of alcoholic beverages to minors. The ABLE Commission may contract with one or more persons to perform the duties specified in this paragraph; ~~and~~

16. To establish a special enforcement division to carry out the Commission's enforcement duties and responsibilities pursuant to the Oklahoma Charity Games Act and the Prevention of Youth Access to Tobacco Act; and

17. To exercise all other powers and duties conferred by the Oklahoma Alcoholic Beverage Control Act, and all powers incidental, convenient or necessary to enable it to administer or carry out any of the provisions of the Oklahoma Alcoholic Beverage Control Act.

SECTION 4. AMENDATORY 37 O.S. 2001, Section 537.1, is amended to read as follows:

Section 537.1 No mixed beverage, beer and wine, bottle club, caterer or special event licensee or any employee, manager, operator or agent thereof shall:

1. Consume or be under the influence of alcoholic beverages during the hours ~~he is~~ on duty. For the purposes of this section, licensees will be deemed to be on duty from the time he or she first comes on duty until the time ~~he~~ the person goes off duty at the end of the shift, including any break periods permitted by management. This paragraph shall not apply to any person who works on the premises as an entertainer only;

2. Permit or tolerate any conduct or language which is intended to threaten another with physical harm or any fighting or offensive physical contact, in or upon the licensed premises or areas just outside the licensed premises which are controlled by the licensee;

3. Permit empty or discarded alcoholic beverage containers to be in public view outside the licensed premises. All empty or discarded containers shall be disposed of in accordance with ABLE Commission rules and regulations;

4. Permit any illegal gambling activity, violations of the state narcotic and dangerous drug laws, or prostitution activity or any other criminal conduct to occur on the licensed premises;

5. Refuse or fail to promptly open a door to the licensed premises upon request of an agent or inspector of the Alcoholic Beverage Laws Enforcement Commission or any other peace officer to enter the premises, when the licensee or employee knows or should know that such request is made by an agent or inspector of the ABLE Commission or any other peace officer. ~~This provision shall not be construed to deny agents of the ABLE Commission or any other peace officer access at any time to any licensed premises~~ section authorizes entry to these establishments only during regular business hours on business days and any entry and inspection made pursuant to this section shall be in compliance with paragraph 10 of Section 514 of this title. A search warrant issued by a court of competent jurisdiction shall be required for any entry and inspection made at any time other than during regular business hours on business days. In the case of an establishment licensed to serve liquor by the drink, a beer and wine licensee, or a bottle club licensee, the business day shall end when either the last customer has exited the licensed premises or the closing hour mandated by Section 591 of this title occurs. The business day shall begin when either the first customer enters the establishment or the opening hour mandated by Section 591 of this title occurs. The employees of

the establishment may be permitted to remain on the licensed premises after closing hours or before opening hours for the purposes of cleaning, restocking, providing security or performing paperwork or other duties associated with the closing or opening of the business. This section shall not be construed to expand or limit the times that service or consumption is allowed pursuant to Section 591 of this title;

6. Permit a sealed or unsealed container of alcoholic beverage to be removed from the licensed premises. Provided that restaurants, hotels and motels may permit the removal of closed original wine containers the contents of which have been partially consumed and bottle clubs may permit the removal by a club member of closed original containers of alcoholic beverages belonging to said members. The provisions of this paragraph shall not be construed to prohibit or restrict hotels or motels who are holders of mixed beverage or beer and wine licenses from allowing alcoholic beverages to be served away from the bar area anywhere on the licensed premises; or

7. Destroy, damage, alter, remove or conceal potential evidence, or attempt to do so, or refuse to surrender evidence when lawfully requested to do so by an inspector, agent or any other peace officer or incite another person to do any of the above.

SECTION 5. AMENDATORY 37 O.S. 2001, Section 539, is amended to read as follows:

Section 539. A. A search warrant may be issued pursuant to the provisions of Sections 1221 through 1264 of Title 22 of the Oklahoma Statutes, ~~as amended,~~ for the purpose of searching for, seizing, destroying or holding any alcoholic beverages possessed, sold, transported, manufactured, kept, or stored in violation of the Oklahoma Alcoholic Beverage Control Act; for the purpose of searching for and seizing any apparatus, vehicle, equipment, or instrumentality used for, or intended for use in, manufacturing or

transporting any alcoholic beverage in violation of the Oklahoma Alcoholic Beverage Control Act; and all such property shall be forfeited to the State of Oklahoma. This section shall not be construed to require a search warrant for duly authorized agents of the Alcoholic Beverage Laws Enforcement Commission to enter upon and inspect any licensed premises, ~~but such right of entry and inspection shall be a condition on which every license shall be issued and the application for, and acceptance of, any license hereunder shall conclusively be deemed to be consent of the applicant and licensee to such entry and inspection~~ during regular business hours on business days pursuant to Section 514 of this title. Such warrantless entries and inspections of a licensed premises conducted under this section shall be limited to areas of the licensed premises where alcoholic beverages are stored, manufactured, sold, dispensed or served or where there is probable cause to believe that alcoholic beverages are stored, manufactured, sold, dispensed or served. A search warrant issued by a court of competent jurisdiction shall be required for any entry and inspection of a licensed premises made by an agent or inspector of the ABLE Commission at any time other than during regular business hours on business days.

B. Any alcoholic beverages upon which the appropriate federal excise tax has not been paid at the time of seizure under this section shall be destroyed by the sheriff who seized the same or to whom the same has been delivered in accordance with the provisions of Section 1261 of Title 22 of the Oklahoma Statutes, ~~as amended,~~ after the same is no longer needed as evidence in any criminal prosecution. All other property, including alcoholic beverages upon which the appropriate federal excise tax has been paid, seized under this section shall be forfeited to the State of Oklahoma by order of the court issuing the process by virtue of which such property was seized, or before which the persons violating the law, or to which

such property was taken by the officer or officers making the seizure. Said court shall, without a jury, order an immediate hearing as to whether the property so seized was subject to seizure under this section, and take such legal evidence as is offered, and determine the same as in civil cases. If the court finds from a preponderance of the evidence that the property so seized was subject to seizure under this section, it shall render judgment accordingly and order said property forfeited to the State of Oklahoma unless seized by county or municipal law enforcement officers in which case said property shall be forfeited to the county or municipality, whichever is appropriate, in which the seizure of the property took place. Such seized property shall be sold by the officer having the same in charge, after giving ten (10) days' notice by one publication in a legal newspaper of the county or, if no legal newspaper is published in said county, after five notices of such sale have been posted in conspicuous places in the city or town wherein such sale is to be made, at least ten (10) days before such sale. Appeal from such an order may be taken as in civil cases. When such property is sold under the provisions of this section, the proceeds thereof shall be distributed as follows: First, to the payment of the costs of the case in which the order of forfeiture was made and the actual expenses of preserving the property; and second, the remainder shall be deposited with the county or municipal treasurer of the county or municipality in which the seizure took place if the property was seized by county or municipal law enforcement officials or with the State Treasurer to the credit of the General Revenue Fund of the State of Oklahoma in all other cases.

SECTION 6. AMENDATORY 37 O.S. 2001, Section 546, is amended to read as follows:

Section 546. Any officer or enforcement employee of the Alcoholic Beverage Laws Enforcement Commission or Oklahoma Tax

Commission shall have power and authority, without a warrant, to enter and examine the licensed premises of all licensees during regular business hours on business days to determine whether any licensee has ~~in his~~ possession of any container of alcoholic beverage upon which the taxes have not been paid as required by the Oklahoma Alcoholic Beverage Control Act and the rules and regulations thereunder, and if such officer or employee shall find any such container of alcoholic beverages ~~he~~ the officer or employee shall immediately seize the same. Any entry or inspection conducted pursuant to this section shall be made in accord with paragraph 10 of Section 514 of this title and shall be limited to areas of the licensed premises where alcoholic beverages are stored, manufactured, sold, dispensed, or served or areas of the licensed premises where there is probable cause to believe that alcoholic beverages are stored, manufactured, sold, dispensed, or served. A search warrant issued by a court of competent jurisdiction shall be required for any entry or inspection of a licensed premises made by an officer or employee of the ABLE Commission or Tax Commission at any time other than during regular business hours on business days. Such officers and employees of the ABLE Commission or ~~Oklahoma~~ Tax Commission shall be given free access ~~to and shall not be hindered or interfered with in their examination of the licensed premises of any licensees, and, in~~ during regular business hours on business days to all areas of the licensed premises where alcoholic beverages are stored, manufactured, sold, dispensed, or served or areas of the licensed premises where there is probable cause to believe that alcoholic beverages are stored, manufactured, sold, dispensed, or served. In case any such officer or employee is denied free access or is hindered or interfered with in making such examination in compliance with this section and Section 514 of this title, any license held by the person preventing such free access or

interfering with or hindering such officer or employee shall be subject to suspension or revocation.

SECTION 7. AMENDATORY 37 O.S. 2001, Section 552, is amended to read as follows:

Section 552. All licensees under the Oklahoma Alcoholic Beverage Control Act shall keep books and records with regard to alcoholic beverages which shall contain such information and itemization thereof as the Alcoholic Beverage Laws Enforcement Commission may prescribe by rules and regulations. All books, records, inventories, invoices and other accounting documents required by this act shall be kept for three (3) years and shall ~~at all times~~ be made available for inspection by duly authorized representatives of the ABLE Commission and Oklahoma Tax Commission after reasonable notice has been provided pursuant to Section 514 of this title. If a licensee fails to produce such books, records, inventories, invoices and other accounting documents required by the Oklahoma Alcoholic Beverage Control Act, the ABLE Commission or Tax Commission may pursue a subpoena duces tecum as provided for in paragraph 11 of Section 514 of this title.

SECTION 8. This act shall become effective November 1, 2003.

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