

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1656

By: Morgan (Danny) of the House

And

Coates of the Senate

AS INTRODUCED

An Act relating to intoxicating liquors; amending 37 O.S. 2001, Section 521, as last amended by Section 1, Chapter 72, O.S.L. 2004 (37 O.S. Supp. 2004, Section 521), which relates to acts authorized by licenses issued pursuant to the Oklahoma Alcoholic Beverage Control Act; modifying restrictions on containers for beverages sold by package stores; and providing an effective date.

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

SECTION 1. AMENDATORY 37 O.S. 2001, Section 521, as last amended by Section 1, Chapter 72, O.S.L. 2004 (37 O.S. Supp. 2004, Section 521), is amended to read as follows:

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

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

1 C. A winemaker license shall authorize the holder thereof: To  
2 manufacture (including such mixing, blending and cellar treatment as  
3 authorized by federal law), bottle, package, and store on licensed  
4 premises wine containing not more than twenty-four percent (24%)  
5 alcohol by volume, provided the bottle or package sizes authorized  
6 shall be limited to the capacities approved by the United States  
7 Bureau of Alcohol, Tobacco and Firearms; to sell wine in this state  
8 to licensed wholesalers and manufacturers, provided, an Oklahoma  
9 winemaker may sell and ship wine produced at a winery in this state  
10 directly to retail package stores and restaurants in this state; to  
11 sell bottles of wine produced at the winery from grapes and other  
12 fruits and berries grown in this state, if available, to consumers  
13 on the premises of the winery; to serve visitors on the licensed  
14 premises free samples of wine produced on the premises; to serve  
15 free samples of wine produced at the winery at festivals and trade  
16 shows; to sell wine produced at the winery, in original sealed  
17 containers, at festivals and trade shows; to sell wine out of this  
18 state to qualified persons; to purchase from licensed winemakers,  
19 distillers and rectifiers in this state, and to import into this  
20 state wine, brandy and fruit spirits for use in manufacturing in  
21 accordance with federal laws and regulations.

22 D. A rectifier license shall authorize the holder thereof: To  
23 rectify spirits and wines, bottle, package, and store same on the  
24 licensed premises; to sell spirits and wines in this state to  
25 licensed wholesalers and manufacturers only; to sell spirits and  
26 wines out of this state to qualified persons; to purchase from  
27 licensed manufacturers in this state; and to import into this state  
28 for manufacturing purposes spirits and wines in accordance with  
29 federal laws and regulations.

30 E. A wholesaler license shall authorize the holder thereof: To  
31 purchase and import into this state spirits and wines from persons  
32 authorized to sell same who are the holders of a nonresident seller

1 license, and their agents who are the holders of manufacturers agent  
2 licenses; to purchase spirits and wines from licensed distillers,  
3 rectifiers, winemakers and wholesalers in this state; to sell  
4 spirits and wines in retail containers in this state to retailers,  
5 mixed beverage, caterer, special event, hotel beverage or  
6 airline/railroad beverage licensees; to sell spirits in containers  
7 with a capacity of less than one-twentieth (1/20) gallon in full  
8 case lots and in the original unbroken case to hotel beverage or  
9 airline/railroad beverage licensees only; to sell wines in  
10 containers with a capacity of less than one-twentieth (1/20) gallon  
11 in full case lots and in the original unbroken case; to sell spirits  
12 and wines to wholesalers authorized to sell same; to sell spirits  
13 and wines out of this state to qualified persons; provided, a  
14 wholesaler license shall authorize the holder thereof to sell  
15 alcoholic beverages in containers with a capacity of less than one-  
16 twentieth (1/20) gallon, if the containers are packaged with other  
17 containers and the total capacity is greater than one-twentieth  
18 (1/20) gallon. Wholesalers shall be authorized to place such signs  
19 outside their place of business as are required by Acts of Congress  
20 and by such laws and regulations promulgated under such Acts.

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

26 F. A Class B wholesaler license shall authorize the holder  
27 thereof: To purchase and import into this state beer from persons  
28 authorized to sell same who are the holders of nonresident seller  
29 licenses, and their agents who are the holders of manufacturers  
30 agent licenses; to purchase beer from licensed brewers and Class B  
31 wholesalers in this state; to sell in retail containers to  
32 retailers, mixed beverage, caterer, special event, hotel beverage

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

9 G. A package store license shall authorize the holder thereof:  
10 To purchase alcohol, spirits and, ~~beer in retail containers with a~~  
11 ~~capacity of more than one twentieth (1/20) gallon or in retail~~  
12 ~~containers with a capacity of less than one twentieth (1/20) gallon~~  
13 ~~if the containers are packaged with other containers and the total~~  
14 ~~capacity is greater than one twentieth (1/20) gallon,~~ and wine in  
15 retail containers with any capacity approved by the United States  
16 Bureau of Alcohol, Tobacco and Firearms from the holder of a brewer,  
17 wholesaler or Class B wholesaler license and to purchase wine  
18 produced at a winery in this state from an Oklahoma winemaker and to  
19 sell same on the licensed premises in such containers to consumers  
20 for off-premises consumption only and not for resale; provided, wine  
21 may be sold to charitable organizations that are holders of  
22 charitable auction licenses. All alcoholic beverages that are sold  
23 by a package store are to be sold at ordinary room temperature. ~~No~~  
24 ~~package store licensee may purchase or sell alcohol, spirits or beer~~  
25 ~~in retail containers with a capacity of less than one twentieth~~  
26 ~~(1/20) gallon, except that a package store licensee may sell~~  
27 ~~alcoholic beverages in retail containers with a capacity of less~~  
28 ~~than one twentieth (1/20) gallon, if the containers are packaged~~  
29 ~~with other containers and the total capacity is greater than one~~  
30 ~~twentieth (1/20) gallon.~~

31 H. A mixed beverage license shall authorize the holder thereof:  
32 To purchase alcohol, spirits or beer in retail containers with a

1 capacity of more than one-twentieth (1/20) gallon and wine in retail  
2 containers with a capacity approved by the United States Bureau of  
3 Alcohol, Tobacco and Firearms from the holder of a wholesaler or  
4 Class B wholesaler license or as specifically provided by law and to  
5 sell, offer for sale and possess mixed beverages for on-premises  
6 consumption only; provided, the holder of a mixed beverage license  
7 issued for an establishment which is also a restaurant may purchase  
8 wine produced at wineries in this state directly from an Oklahoma  
9 winemaker as provided in Section 3 of Article XXVIII of the Oklahoma  
10 Constitution.

11 Sales and service of mixed beverages by holders of mixed  
12 beverage licenses shall be limited to the licensed premises of the  
13 licensee unless the holder of the mixed beverage license also  
14 obtains a caterer license or a mixed beverage/caterer combination  
15 license. A mixed beverage license shall only be issued in counties  
16 of this state where the sale of alcoholic beverages by the  
17 individual drink for on-premises consumption has been authorized. A  
18 separate license shall be required for each place of business. No  
19 mixed beverage license shall be issued for any place of business  
20 functioning as a motion picture theater, as defined by Section 506  
21 of this title.

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

30 J. A caterer license shall authorize the holder thereof: To  
31 sell mixed beverages for on-premises consumption incidental to the  
32 sale or distribution of food at particular functions, occasions, or

1 events which are temporary in nature. A caterer license shall not  
2 be issued in lieu of a mixed beverage license. A caterer license  
3 shall only be issued in counties of this state where the sale of  
4 alcoholic beverages by the individual drink for on-premises  
5 consumption has been authorized. A separate license shall be  
6 required for each place of business.

7 K. 1. An annual special event license shall authorize the  
8 holder thereof: To sell and distribute mixed beverages for  
9 consumption on the premises for which the license has been issued  
10 for up to four events to be held over a period not to exceed one (1)  
11 year, not to exceed two such events in any three-month period. For  
12 purposes of this paragraph, an event shall not exceed a period of  
13 ten (10) consecutive days. An annual special event license shall  
14 only be issued in counties of this state where the sale of alcoholic  
15 beverages by the individual drink for on-premises consumption has  
16 been authorized. The holder of an annual special event license  
17 shall provide written notice to the ABLE Commission of each special  
18 event not less than ten (10) days before the event is held.

19 2. A quarterly special event license shall authorize the holder  
20 thereof: To sell and distribute mixed beverages for consumption on  
21 the premises for which the license has been issued for up to three  
22 events to be held over a period not to exceed three (3) months. For  
23 purposes of this paragraph, an event shall not exceed a period of  
24 ten (10) consecutive days. A quarterly special event license shall  
25 only be issued in counties of this state where the sale of alcoholic  
26 beverages by the individual drink for on-premises consumption has  
27 been authorized. The holder of a quarterly special event license  
28 shall provide written notice to the ABLE Commission of each special  
29 event not less than ten (10) days before the event is held.

30 L. A hotel beverage license shall authorize the holder thereof:  
31 To sell or serve alcoholic beverages in 50 milliliter spirits, 187  
32 milliliter wine, and 12-ounce malt beverage containers which are

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

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

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

1 employees of the holder of a license under the Oklahoma Alcoholic  
2 Beverage Control Act, Section 502 et seq. of this title but no such  
3 license shall be required of an employee making sales of alcoholic  
4 beverages on licensed premises of the employee's principal. No  
5 person holding an agent license shall be entitled to a manufacturers  
6 agent license.

7 O. An employee license shall authorize the holder thereof: To  
8 work in a package store, mixed beverage establishment, bottle club,  
9 or any establishment where alcohol or alcoholic beverages are sold,  
10 mixed, or served. Persons employed by a mixed beverage licensee or  
11 a bottle club who do not participate in the service, mixing, or sale  
12 of mixed beverages shall not be required to have an employee  
13 license. Provided, however, that a manager employed by a mixed  
14 beverage licensee or a bottle club shall be required to have an  
15 employee license whether or not the manager participates in the  
16 service, mixing or sale of mixed beverages. Applicants for an  
17 employee license must have a health card issued by the county in  
18 which they are employed, if the county issues such a card.

19 Employees of special event, caterer or airline/railroad beverage  
20 licensees shall not be required to obtain an employee license.  
21 Persons employed by a hotel licensee who participate in the stocking  
22 of hotel room mini-bars or in the handling of alcoholic beverages to  
23 be placed in such devices shall be required to have an employee  
24 license.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 1. A storage license issued to a Class B wholesaler shall  
2 permit the storage of light beer and permit the sale and delivery to  
3 retailers from the premises covered by such license;

4 2. Any licensee who is the holder of a mixed beverage/caterer  
5 combination license or the holder of a mixed beverage license and a  
6 hotel beverage license who is issued a storage license shall store  
7 all inventories of alcoholic beverages either on the premises of the  
8 mixed beverage establishment or in the warehouse;

9 3. A storage license shall not be required for a special event  
10 licensee storing alcoholic beverages for use at a subsequent event;  
11 and

12 4. Notwithstanding the provisions of subsection H of this  
13 section or any other provision of this title, a licensee who wholly  
14 owns more than one licensed mixed beverage establishment may store  
15 alcoholic beverages for each of the licensed establishments in one  
16 location under one storage license. Alcoholic beverages purchased  
17 and stored pursuant to the provisions of a storage license, for one  
18 licensed mixed beverage establishment may be transferred by a  
19 licensee to another licensed mixed beverage establishment which is  
20 wholly owned by the same licensee. Notice of such a transfer shall  
21 be given in writing to the Oklahoma Tax Commission and the ABLE  
22 Commission within three (3) business days of the transfer. The  
23 notice shall clearly show the quantity, brand and size of every  
24 transferred bottle or case.

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

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1 V. A beer and wine license shall authorize the holder thereof:  
2 To purchase beer and wine in retail containers with a capacity of  
3 more than one-twentieth (1/20) gallon from the holder of a  
4 wholesaler or Class B wholesaler license or as specifically provided  
5 by law and to sell, offer for sale and possess beer and wine for on-  
6 premises consumption only; provided, the holder of a beer and wine  
7 license issued for an establishment which is also a restaurant may  
8 purchase wine produced at wineries in this state directly from an  
9 Oklahoma winemaker as provided in Section 3 of Article XXVIII of the  
10 Oklahoma Constitution.

11 Sales and service of beer and wine by holders of beer and wine  
12 licenses shall be limited to the licensed premises of the licensee  
13 unless the holder of the beer and wine license also obtains a  
14 caterer license. A beer and wine license shall only be issued in  
15 counties of this state where the sale of alcoholic beverages by the  
16 individual drink for on-premises consumption has been authorized. A  
17 separate license shall be required for each place of business. No  
18 beer and wine license shall be issued for any place of business  
19 functioning as a motion picture theater, as defined by Section 506  
20 of this title. No spirits shall be stored, possessed or consumed on  
21 the licensed premises of a beer and wine licensee.

22 W. A charitable auction license may be issued to a charitable  
23 organization exempt from taxation under Section 501(c)(3), (4), (5),  
24 (7), (8), (9), (10), or (19) of the United States Internal Revenue  
25 Code. The license shall authorize the holder thereof to auction  
26 wine purchased from a retail package store or received as a gift  
27 from an individual, if the auction is conducted to raise funds for  
28 charitable purposes. The license shall be issued for a period not  
29 exceeding two (2) days. Only one such license may be issued to an  
30 organization in any twelve-month period. The maximum amount of wine  
31 auctioned pursuant to the license shall not exceed fifty (50)  
32 gallons. All wines auctioned shall be registered and all fees and

1 taxes shall be paid in accordance with the Oklahoma Alcoholic  
2 Beverage Control Act. The auction may be either a live auction  
3 conducted by an auctioneer or a silent auction for which bid sheets  
4 are accepted from interested bidders.

5 X. A mixed beverage/caterer combination license shall authorize  
6 the holder thereof: To purchase or sell mixed beverages as  
7 specifically provided by law for the holder of a mixed beverage  
8 license or a caterer license. All provisions of the Oklahoma  
9 Alcoholic Beverage Control Act applicable to mixed beverage licenses  
10 or caterer licenses, or the holders thereof, shall also be  
11 applicable to mixed beverage/caterer combination licenses or the  
12 holders thereof, except where specifically otherwise provided. A  
13 mixed beverage/caterer combination license shall only be issued in  
14 counties of this state where the sale of alcoholic beverages by the  
15 individual drink for on-premises consumption has been authorized. A  
16 separate license shall be required for each place of business.

17 SECTION 2. This act shall become effective November 1, 2005.

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