

EHB 1656

THE STATE SENATE
Tuesday, March 22, 2005

ENGROSSED

House Bill No. 1656

ENGROSSED HOUSE BILL NO. 1656 - By: MORGAN (Danny), KIESEL and NATIONS of the House and COATES of the Senate.

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

1 state, and import spirits from without this state for manufacturing
2 purposes in accordance with federal laws and regulations.

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

1 D. A rectifier license shall authorize the holder thereof: To
2 rectify spirits and wines, bottle, package, and store same on the
3 licensed premises; to sell spirits and wines in this state to
4 licensed wholesalers and manufacturers only; to sell spirits and
5 wines out of this state to qualified persons; to purchase from
6 licensed manufacturers in this state; and to import into this state
7 for manufacturing purposes spirits and wines in accordance with
8 federal laws and regulations.

9 E. A wholesaler license shall authorize the holder thereof: To
10 purchase and import into this state spirits and wines from persons
11 authorized to sell same who are the holders of a nonresident seller
12 license, and their agents who are the holders of manufacturers agent
13 licenses; to purchase spirits and wines from licensed distillers,
14 rectifiers, winemakers and wholesalers in this state; to sell
15 spirits and wines in retail containers in this state to retailers,
16 mixed beverage, caterer, special event, hotel beverage or
17 airline/railroad beverage licensees; to sell spirits in containers
18 with a capacity of less than one-twentieth (1/20) gallon in full
19 case lots and in the original unbroken case to hotel beverage or
20 airline/railroad beverage licensees only; to sell wines in
21 containers with a capacity of less than one-twentieth (1/20) gallon
22 in full case lots and in the original unbroken case; to sell spirits
23 and wines to wholesalers authorized to sell same; to sell spirits

1 and wines out of this state to qualified persons; provided, a
2 wholesaler license shall authorize the holder thereof to sell
3 alcoholic beverages in containers with a capacity of less than one-
4 twentieth (1/20) gallon, if the containers are packaged with other
5 containers and the total capacity is greater than one-twentieth
6 (1/20) gallon. Wholesalers shall be authorized to place such signs
7 outside their place of business as are required by Acts of Congress
8 and by such laws and regulations promulgated under such Acts.

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

14 F. A Class B wholesaler license shall authorize the holder
15 thereof: To purchase and import into this state beer from persons
16 authorized to sell same who are the holders of nonresident seller
17 licenses, and their agents who are the holders of manufacturers
18 agent licenses; to purchase beer from licensed brewers and Class B
19 wholesalers in this state; to sell in retail containers to
20 retailers, mixed beverage, caterer, special event, hotel beverage
21 and airline/railroad beverage licensees in this state, beer which
22 has been unloaded and stored at the holder's self-owned or leased
23 and self-operated warehouse facilities for a period of at least

1 twenty-four (24) hours before such sale; and to sell beer in this
2 state to Class B wholesalers and out of this state to qualified
3 persons, including federal instrumentalities and voluntary
4 associations of military personnel on federal enclaves in this state
5 over which this state has ceded jurisdiction.

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

1 ~~alcoholic beverages in retail containers with a capacity of less~~
2 ~~than one-twentieth (1/20) gallon, if the containers are packaged~~
3 ~~with other containers and the total capacity is greater than one-~~
4 ~~twentieth (1/20) gallon.~~

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

17 Sales and service of mixed beverages by holders of mixed
18 beverage licenses shall be limited to the licensed premises of the
19 licensee unless the holder of the mixed beverage license also
20 obtains a caterer license or a mixed beverage/caterer combination
21 license. A mixed beverage license shall only be issued in counties
22 of this state where the sale of alcoholic beverages by the
23 individual drink for on-premises consumption has been authorized. A

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

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

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

22 K. 1. An annual special event license shall authorize the
23 holder thereof: To sell and distribute mixed beverages for

1 consumption on the premises for which the license has been issued
2 for up to four events to be held over a period not to exceed one (1)
3 year, not to exceed two such events in any three-month period. For
4 purposes of this paragraph, an event shall not exceed a period of
5 ten (10) consecutive days. An annual special event license shall
6 only be issued in counties of this state where the sale of alcoholic
7 beverages by the individual drink for on-premises consumption has
8 been authorized. The holder of an annual special event license
9 shall provide written notice to the ABLE Commission of each special
10 event not less than ten (10) days before the event is held.

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

22 L. A hotel beverage license shall authorize the holder thereof:
23 To sell or serve alcoholic beverages in 50 milliliter spirits, 187

1 milliliter wine, and 12-ounce malt beverage containers which are
2 distributed from a hotel room mini-bar. A hotel beverage 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 hotel beverage license shall
6 only be issued to a hotel or motel as defined by Section 506 of this
7 title which is also the holder of a mixed beverage license.
8 Provided, that application may be made simultaneously for both such
9 licenses. A separate license shall be required for each place of
10 business.

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

1 outside the State of Oklahoma or in interstate commerce, and shall
2 be exempt from the excise tax provided for in Section 553 of this
3 title.

4 N. An agent license shall authorize the holder thereof: To
5 represent only the holders of licenses within this state, other than
6 retailers, authorized to sell alcoholic beverages to retail dealers
7 in Oklahoma, and to solicit and to take orders for the purchase of
8 alcoholic beverages from retailers including licensees authorized to
9 sell alcoholic beverages by the individual drink for on-premises
10 consumption. Such license shall be issued only to agents and
11 employees of the holder of a license under the Oklahoma Alcoholic
12 Beverage Control Act, Section 502 et seq. of this title but no such
13 license shall be required of an employee making sales of alcoholic
14 beverages on licensed premises of the employee's principal. No
15 person holding an agent license shall be entitled to a manufacturers
16 agent license.

17 O. An employee license shall authorize the holder thereof: To
18 work in a package store, mixed beverage establishment, bottle club,
19 or any establishment where alcohol or alcoholic beverages are sold,
20 mixed, or served. Persons employed by a mixed beverage licensee or
21 a bottle club who do not participate in the service, mixing, or sale
22 of mixed beverages shall not be required to have an employee
23 license. Provided, however, that a manager employed by a mixed

1 beverage licensee or a bottle club shall be required to have an
2 employee license whether or not the manager participates in the
3 service, mixing or sale of mixed beverages. Applicants for an
4 employee license must have a health card issued by the county in
5 which they are employed, if the county issues such a card.
6 Employees of special event, caterer or airline/railroad beverage
7 licensees shall not be required to obtain an employee license.
8 Persons employed by a hotel licensee who participate in the stocking
9 of hotel room mini-bars or in the handling of alcoholic beverages to
10 be placed in such devices shall be required to have an employee
11 license.

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

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

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

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

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

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

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

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

18 R. A private carrier license may be issued to any carrier other
19 than a common carrier described in subsection P of this section.
20 Such license shall authorize the holder thereof to transport
21 alcoholic beverages into, within, or out of this state under such
22 terms, conditions, limitations, and restrictions as the ABLE
23 Commission may prescribe by order issuing such license and by

1 regulations. No carrier license or private carrier license shall be
2 required of licensed brewers, distillers, winemakers, rectifiers,
3 wholesalers, or Class B wholesalers, to transport alcoholic
4 beverages from the place of purchase or acquisition to the licensed
5 premises of such licensees and from such licensed premises to the
6 licensed premises of the purchaser in vehicles owned or leased by
7 such licensee when such transportation is for a lawful purpose and
8 not for hire.

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

19 S. A bonded warehouse license shall authorize the holder
20 thereof: To receive and store alcoholic beverages for the holders
21 of storage licenses on the licensed premises of the bonded warehouse
22 licensee. No goods, wares or merchandise other than alcoholic
23 beverages may be stored in the same bonded warehouse with alcoholic

1 beverages. The holder of a bonded warehouse license shall furnish
2 and file with the ABLE Commission a bond running to all bailers of
3 alcoholic beverages under proper storage licenses and their
4 assignees (including mortgagees or other bona fide lienholders)
5 conditioned upon faithful performance of the terms and conditions of
6 such bailments.

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

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

19 2. Any licensee who is the holder of a mixed beverage/caterer
20 combination license or the holder of a mixed beverage license and a
21 hotel beverage license who is issued a storage license shall store
22 all inventories of alcoholic beverages either on the premises of the
23 mixed beverage establishment or in the warehouse;

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

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

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

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),

1 (7), (8), (9), (10), or (19) of the United States Internal Revenue
2 Code. The license shall authorize the holder thereof to auction
3 wine purchased from a retail package store or received as a gift
4 from an individual, if the auction is conducted to raise funds for
5 charitable purposes. The license shall be issued for a period not
6 exceeding two (2) days. Only one such license may be issued to an
7 organization in any twelve-month period. The maximum amount of wine
8 auctioned pursuant to the license shall not exceed fifty (50)
9 gallons. All wines auctioned shall be registered and all fees and
10 taxes shall be paid in accordance with the Oklahoma Alcoholic
11 Beverage Control Act. The auction may be either a live auction
12 conducted by an auctioneer or a silent auction for which bid sheets
13 are accepted from interested bidders.

14 X. A mixed beverage/caterer combination license shall authorize
15 the holder thereof: To purchase or sell mixed beverages as
16 specifically provided by law for the holder of a mixed beverage
17 license or a caterer license. All provisions of the Oklahoma
18 Alcoholic Beverage Control Act applicable to mixed beverage licenses
19 or caterer licenses, or the holders thereof, shall also be
20 applicable to mixed beverage/caterer combination licenses or the
21 holders thereof, except where specifically otherwise provided. A
22 mixed beverage/caterer combination license shall only be issued in
23 counties of this state where the sale of alcoholic beverages by the

1 individual drink for on-premises consumption has been authorized. A
2 separate license shall be required for each place of business.

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

4 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND LABOR, dated 3-21-05
5 - DO PASS.