

CS for SB 442

THE STATE SENATE
Monday, February 28, 2005

Committee Substitute for
Senate Bill No. 442

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 442 - By: SHURDEN of the Senate and MORGAN (Danny) of the House.

[intoxicating liquor - amending Title 37 - Oklahoma Alcoholic Beverage Control Act - effective date]

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

SECTION 1. AMENDATORY 37 O.S. 2001, Section 506, is amended to read as follows:

Section 506. ~~When~~ As used in the Oklahoma Alcoholic Beverage Control Act, ~~the following words and phrases shall have the following meaning mean:~~

- 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

1 solid, patented or not, containing alcohol, spirits, wine or beer
2 and capable of being consumed as a beverage by human beings, but
3 does not include low-point beer as that term is defined in Section
4 163.2 of this title;

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

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

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

22 7. "Brewer" means any person who produces beer in this state;

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

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

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

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

20 12. "Hotel" or "motel" shall mean an establishment which is
21 licensed to sell alcoholic beverages by the individual drink and
22 which contains guestroom accommodations with respect to which the
23 predominant relationship existing between the occupants thereof and

1 the owner or operator of the establishment is that of innkeeper and
2 guest. For purposes of this section, the existence of other legal
3 relationships as between some occupants and the owner or operator
4 thereof shall be immaterial;

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

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

13 15. "Light beer" means a low-point beer controlled under this
14 title;

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

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

20 18. "Manufacturer" means a brewer, distiller, winemaker,
21 rectifier, or bottler of any alcoholic beverage;

22 19. "Meals" means foods commonly ordered at lunch or dinner and
23 at least part of which is cooked on the licensed premises and

1 requires the use of dining implements for consumption. Provided,
2 that the service of only food such as appetizers, sandwiches, salads
3 or desserts shall not be considered "meals";

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

9 21. "Mixed beverage cooler" means any beverage, by whatever
10 name designated, consisting of an alcoholic beverage and fruit or
11 vegetable juice, fruit or vegetable flavorings, dairy products or
12 carbonated water containing more than one-half of one percent (1/2
13 of 1%) of alcohol measured by volume but not more than seven percent
14 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is
15 packaged in a container not larger than three hundred seventy-five
16 (375) milliliters. Such term shall include, but not be limited to,
17 the beverage popularly known as a "wine cooler";

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

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

6 24. "Retail salesperson" means a salesperson soliciting orders
7 from and calling upon retail alcoholic beverage stores with regard
8 to his or her product;

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

14 26. "Original package" means any container of alcoholic
15 beverage filled and stamped or sealed by the manufacturer;

16 27. "Patron" means any person, customer, or visitor who is not
17 employed by a licensee or who is not a licensee;

18 28. "Person" means an individual, any type of partnership,
19 corporation, association, limited liability company or any
20 individual involved in the legal structure of any such business
21 entity;

22 29. "Premises" means the grounds and all buildings and
23 appurtenances pertaining to the grounds including any adjacent

1 premises if under the direct or indirect control of the licensee and
2 the rooms and equipment under the control of the licensee and used
3 in connection with or in furtherance of the business covered by a
4 license. Provided that the ABLE Commission shall have the authority
5 to designate areas to be excluded from the licensed premises solely
6 for the purpose of:

- 7 a. allowing the presence and consumption of alcoholic
8 beverages by private parties which are closed to the
9 general public, or
- 10 b. allowing the services of a caterer serving alcoholic
11 beverages provided by a private party.

12 This exception shall in no way limit the licensee's concurrent
13 responsibility for any violations of the Oklahoma Alcoholic Beverage
14 Control Act occurring on the licensed premises;

15 30. "Rectifier" means any person who rectifies, purifies, or
16 refines spirits or wines by any process (other than by original and
17 continuous distillation, or original and continuous processing, from
18 mash, wort, wash, or other substance, through continuous closed
19 vessels and pipes, until the production thereof is complete), and
20 any person who, without rectifying, purifying, or refining spirits,
21 shall by mixing (except for immediate consumption on the premises
22 where mixed) such spirits, wine, or other liquor with any material,
23 manufactures any spurious, imitation, or compound liquors for sale,

1 under the name of whiskey, brandy, rum, gin, wine, spirits,
2 cordials, or any other name;

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

5 32. "Restaurant" means an establishment that is licensed to
6 sell alcoholic beverages by the individual drink for on-premises
7 consumption and where food is prepared and sold for immediate
8 consumption on the premises;

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

14 34. "Retailer" means the holder of a Package Store License;

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

1 36. "Short order food" means food other than full meals
2 including but not limited to sandwiches, soups, and salads.
3 Provided that popcorn, chips, and other similar snack food shall not
4 be considered "short order food";

5 37. "Sparkling wine" means champagne or any artificially
6 carbonated wine;

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

15 39. "Wholesaler" means and includes any person doing any such
16 acts or carrying on any such business or businesses that would
17 require such person to obtain a wholesaler's license or licenses
18 hereunder;

19 40. "Wine" means and includes any beverage containing more than
20 one-half of one percent (1/2 of 1%) alcohol by volume and not more
21 than twenty-four percent (24%) alcohol by volume at sixty (60)
22 degrees Fahrenheit obtained by the fermentation of the natural
23 contents of fruits, vegetables, honey, milk or other products

1 containing sugar, whether or not other ingredients are added, and
2 includes vermouth and sake, known as Japanese rice wine;

3 41. "Winemaker" means any person who produces wine; and

4 42. "Oklahoma winemaker" means a business premises in Oklahoma
5 licensed pursuant to the Oklahoma Alcoholic Beverage Control Act
6 wherein wine is produced by the licensee who must be a resident of
7 the state. The wine product fermented in said licensed premises
8 ~~shall~~ may be of grapes, berries and other fruits and vegetables
9 imported into this state and processed herein ~~or~~, provided that a
10 minimum of one third (1/3) of the wine product shall be of grapes,
11 berries and other fruits and vegetables grown in Oklahoma.

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

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

16 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND LABOR, dated 2-21-05
17 - DO PASS, As Amended and Coauthored.