

CS for SB 651

THE STATE SENATE  
Monday, February 28, 2005

Committee Substitute for  
Senate Bill No. 651

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 651 - By: SHURDEN of the Senate and LIEBMANN of the House.

An Act relating to intoxicating liquors; amending 37 O.S. 2001, Section 537, as amended by Section 27, Chapter 460, O.S.L. 2002 (37 O.S. Supp. 2004, Section 537), which relates to the Oklahoma Alcoholic Beverage Control Act; modifying certain prohibited act; and providing an effective date.

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

SECTION 1. AMENDATORY 37 O.S. 2001, Section 537, as amended by Section 27, Chapter 460, O.S.L. 2002 (37 O.S. Supp. 2004, Section 537), is amended to read as follows:

Section 537. A. No person shall:

- 1. Knowingly sell, deliver, or furnish alcoholic beverages to any person under twenty-one (21) years of age;
- 2. Sell, deliver or knowingly furnish alcoholic beverages to an intoxicated person or to any person who has been adjudged insane or mentally deficient;
- 3. Open a retail container or consume alcoholic beverages on the premises of a retail package store;
- 4. Import into this state, except as provided for in the Oklahoma Alcoholic Beverage Control Act, any alcoholic beverages; provided, that nothing herein shall prohibit the importation or

1 possession for personal use of not more than one (1) liter of  
2 alcoholic beverages upon which the Oklahoma excise tax is  
3 delinquent;

4 5. Receive, possess, or use any alcoholic beverage in violation  
5 of the provisions of the Oklahoma Alcoholic Beverage Control Act;

6 6. Transport into, within, or through this state more than one  
7 (1) liter of alcoholic beverages upon which the Oklahoma excise tax  
8 has not been paid unless the person accompanying or in charge of the  
9 vehicle transporting same shall possess a true copy of a bill of  
10 lading, invoice, manifest or other document particularly identifying  
11 the alcoholic beverages being transported and showing the name and  
12 address of the consignor and consignee;

13 7. Knowingly transport in any vehicle upon a public highway,  
14 street or alley any alcoholic beverage except in the original  
15 container which shall not have been opened and the seal upon which  
16 shall not have been broken and from which the original cap or cork  
17 shall not have been removed, unless the opened container be in the  
18 rear trunk or rear compartment, which shall include the spare tire  
19 compartment in a vehicle commonly known as a station wagon and panel  
20 truck, or any outside compartment which is not accessible to the  
21 driver or any other person in the vehicle while it is in motion;

22 8. Drink intoxicating liquor in public except on the premises  
23 of a licensee of the Alcoholic Beverage Laws Enforcement Commission

1 who is authorized to sell or serve alcoholic beverages by the  
2 individual drink or be intoxicated in a public place. This  
3 provision shall be cumulative and in addition to existing law;

4 9. Forcibly resist lawful arrest, or by physical contact  
5 interfere with an investigation of any infringement of the Oklahoma  
6 Alcoholic Beverage Control Act or with any lawful search or seizure  
7 being made by an inspector or agent of the ABLE Commission, when  
8 such person knows or should know that such acts are being performed  
9 by a state, county, or municipal officer, inspector or agent of the  
10 ABLE Commission;

11 10. Manufacture, duplicate, counterfeit or in any way imitate  
12 any bottle club membership card required to be issued by the ABLE  
13 Commission without the permission of the Commission;

14 11. Consume or possess alcoholic beverages on the licensed  
15 premises of a bottle club unless such person possesses a valid  
16 membership card for that club issued by the club; or

17 12. Knowingly possess any bottle club membership card required  
18 to be issued by the ABLE Commission, which has been manufactured,  
19 counterfeited, imitated or in any way duplicated without the  
20 permission of the Commission.

21 B. No licensee of the ABLE Commission shall:

1           1. Receive, possess, or sell any alcoholic beverage except as  
2 authorized by the Oklahoma Alcoholic Beverage Control Act and by the  
3 license or permit which the licensee holds;

4           2. Employ any person under the age of twenty-one (21) in the  
5 selling or handling of alcoholic beverages. Provided, that a mixed  
6 beverage, beer and wine, caterer, special event or bottle club  
7 licensee may employ servers who are at least eighteen (18) years of  
8 age, except persons under twenty-one (21) years of age may not serve  
9 in designated bar or lounge areas, and a mixed beverage, beer and  
10 wine, caterer, special event or bottle club licensee may employ or  
11 hire musical bands who have musicians who are under twenty-one (21)  
12 years of age if each such musician is either accompanied by a parent  
13 or legal guardian or has on their person, to be made available for  
14 inspection upon demand by any ABLE Commission officer or law  
15 enforcement officer, a written, notarized affidavit from the parent  
16 or legal guardian giving the underage musician permission to perform  
17 in designated bar or lounge areas;

18           3. Give any alcoholic beverage as a prize, premium or  
19 consideration for any lottery, game of chance or skill or any type  
20 of competition;

21           4. Advertise or offer "happy hours" or any other means or  
22 inducements to stimulate the consumption of alcoholic beverages  
23 including:

- 1 a. deliver more than two drinks to one person at one  
2 time;
- 3 b. sell or offer to sell to any person or group of  
4 persons any drinks at a price less than the price  
5 regularly charged for such drinks during the same  
6 calendar week, except at private functions not open to  
7 the public;
- 8 c. sell or offer to sell to any person an unlimited  
9 number of drinks during any set period of time for a  
10 fixed price, except at private functions not open to  
11 the public;
- 12 d. sell or offer to sell drinks to any person or group of  
13 persons on any one day at prices less than those  
14 charged the general public on that day, except at  
15 private functions not open to the public;
- 16 e. increase the volume of alcoholic beverages contained  
17 in a drink without increasing proportionately the  
18 price regularly charged for such drink during the same  
19 calendar week; or
- 20 f. encourage or permit, on the licensed premises, any  
21 game or contest which involves drinking or the  
22 awarding of drinks as prizes.

1 Provided that the provisions of this paragraph shall not prohibit  
2 the advertising or offering of food or entertainment in licensed  
3 establishments;

4 5. Permit or allow any patron or person to exit the licensed  
5 premises with an open container of any alcoholic beverage.

6 Provided, that this prohibition shall not be applicable to closed  
7 original containers of alcoholic beverages which are carried from  
8 the licensed premises of a bottle club by a patron, closed original  
9 wine containers removed from the premises of restaurants, hotels,  
10 and motels, or to closed original containers of alcoholic beverages  
11 transported to and from the place of business of a licensed caterer  
12 by the caterer or an employee of the caterer; or

13 6. Serve or sell alcoholic beverages with an expired license  
14 issued by the ABLE Commission.

15 C. No package store licensee shall:

16 1. Purchase or receive any alcoholic beverage other than from a  
17 person holding a brewer, wholesaler or Class B wholesaler license  
18 issued pursuant to the Oklahoma Alcoholic Beverage Control Act;

19 2. Suffer or permit any retail container to be opened, or any  
20 alcoholic beverage to be consumed, on the licensed premises;

21 3. Sell, or keep package store premises open for the purpose of  
22 selling, any alcoholic beverages at any hour other than between the  
23 hours of 10:00 a.m. and 9:00 p.m. Monday through Saturday; provided,

1 that no such sales shall be made, or package store premises be  
2 allowed to remain open for the purpose of making such sales, on the  
3 day of any General, Primary, Runoff Primary or Special Election  
4 while the polls are open whether on a national, state, county or  
5 city election or on New Year's Day, Memorial Day, the Fourth of  
6 July, Labor Day, ~~Veterans Day~~, Thanksgiving Day or Christmas Day;

7 4. Operate a retail package store unless such store shall be  
8 located in a city or town having a population in excess of two  
9 hundred (200) according to the latest Federal Decennial Census;

10 5. Sell any alcoholic beverage on credit; provided that  
11 acceptance by a retail liquor store of a cash or debit card, or a  
12 nationally recognized credit card, in lieu of actual cash payment  
13 does not constitute the extension of credit; provided further, as  
14 used in this section:

15 a. "cash or debit card" means any instrument or device  
16 whether known as a debit card or by any other name,  
17 issued with or without fee by an issuer for the use of  
18 the cardholder in depositing, obtaining or  
19 transferring funds from a consumer banking electronic  
20 facility,

21 b. "nationally recognized credit card" means any  
22 instrument or device, whether known as a credit card,  
23 credit plate, charge plate or by any other name,

1 issued with or without fee by an issuer for the use of  
2 the cardholder in obtaining money, goods, services or  
3 anything else of value on credit which is accepted by  
4 over one hundred ~~(100)~~ merchants;

5 6. Offer or furnish any prize, premium, gift or similar  
6 inducement to a consumer in connection with the sale of alcoholic  
7 beverage, except that goods or merchandise included by the  
8 manufacturer in packaging with alcoholic beverages or for packaging  
9 with alcoholic beverages shall not be included in this prohibition,  
10 but no wholesaler or package store shall sell any alcoholic beverage  
11 prepackaged with other goods or merchandise at a price which is  
12 greater than the price at which the alcoholic beverage alone is  
13 sold;

14 7. Permit any person under twenty-one (21) years of age to  
15 enter into, remain within or loiter about the licensed premises; or

16 8. Pay for alcoholic beverages by a check or draft which is  
17 dishonored by the drawee when presented to such drawee for payment;  
18 and the ABLE Commission may cancel or suspend the license of any  
19 retailer who has given a check or draft, as maker or endorser, which  
20 is so dishonored upon presentation.

21 D. No wholesaler licensee shall:

22 1. Sell or deliver any amount of spirits or wines to any  
23 package store licensee on Saturday or Sunday; or

1           2. Sell or deliver any amount of spirits or wines to any  
2 package store licensee on ~~New Year's Day, Memorial Day,~~ the Fourth  
3 of July, Labor Day, Veterans Day, Thanksgiving Day or Christmas Day.

4           E. No mixed beverage or beer and wine licensee shall:

5           1. Purchase or receive any alcoholic beverage other than from a  
6 person holding a wholesaler or Class B wholesaler license issued  
7 pursuant to the Oklahoma Alcoholic Beverage Control Act; provided, a  
8 mixed beverage or beer and wine licensee whose premises are a  
9 restaurant may purchase wine produced at wineries in this state  
10 directly from an Oklahoma winemaker as provided in Section 3 of  
11 Article XXVIII of the Oklahoma Constitution;

12          2. Transport alcoholic beverages from the place of purchase to  
13 the licensed premises unless the licensee also holds a private  
14 carrier license issued by the ABLE Commission;

15          3. Use or allow the use of any mark or label on a container of  
16 alcoholic beverage which is kept for sale which does not clearly and  
17 precisely indicate the nature of the contents or which might deceive  
18 or conceal the nature, composition, quantity, age or quality of such  
19 beverage;

20          4. Keep or knowingly permit any alcoholic beverage to be kept,  
21 brought or consumed on the licensed premises which is not allowed to  
22 be sold or served upon such premises; or

1           5. Allow any person under twenty-one (21) years of age to enter  
2 into, remain within or loiter about the designated bar area of the  
3 licensed premises, except for members of a musical band employed or  
4 hired as provided in paragraph 2 of subsection B of this section  
5 when the band is to perform within such area.

6           The prohibition in this subsection against persons under twenty-  
7 one (21) years of age entering or remaining within the designated  
8 bar area of the licensed premises shall not apply, if the licensed  
9 premises are closed to the public during a time the premises are  
10 legally permitted to be open for business and the premises are used  
11 for a private party at which alcoholic beverages may be served to  
12 persons twenty-one (21) years of age or older. Any alcoholic  
13 beverages served at a private party on the licensed premises may be  
14 purchased from the licensee at a negotiated price or purchased  
15 privately and served at the private party on the licensed premises.  
16 Any licensee who desires to conduct such a private party shall  
17 notify the ABLE Commission, in writing, at least ten (10) calendar  
18 days prior to the private party. The notification shall include the  
19 date, time, and purpose of the private party and any other  
20 information the ABLE Commission may deem necessary.

21           F. No bottle club licensee shall:

22           1. Use or allow the use of any mark or label on a container of  
23 alcoholic beverage which does not clearly and precisely indicate the

1 nature of the contents or which might deceive or conceal the nature,  
2 composition, quantity, age or quality of any such beverage;

3 2. Act as an agent for any bottle club member and purchase any  
4 alcoholic beverage for the member;

5 3. Use or allow the use of any pool system of storage or  
6 purchase of alcoholic beverages;

7 4. Allow any person to enter or remain in the designated bar or  
8 lounge area of the club unless that person possesses a valid  
9 membership card for that club issued by the club;

10 5. Sell any alcoholic beverage;

11 6. Deliver or furnish to any club member any alcoholic beverage  
12 that does not belong to the member;

13 7. Serve alcoholic beverages to any person who does not possess  
14 a valid membership card for that club issued by the club;

15 8. Issue a membership card for the club to a person under  
16 twenty-one (21) years of age; or

17 9. Allow any person under twenty-one (21) years of age to enter  
18 into, remain within or loiter about the designated bar area of the  
19 licensed premises, except for members of a musical band employed or  
20 hired as provided in paragraph 2 of subsection B of this section  
21 when the band is to perform within such area.

22 The prohibition in this subsection against persons under twenty-  
23 one (21) years of age entering or remaining within the designated

1 bar area of the licensed premises shall not apply, if the licensed  
2 premises are closed to the public during a time the premises are  
3 legally permitted to be open for business and the premises are used  
4 for a private party at which alcoholic beverages may be served to  
5 persons twenty-one (21) years of age or older. Any alcoholic  
6 beverages served at a private party on the licensed premises may be  
7 purchased from the licensee at a negotiated price or purchased  
8 privately and served at the private party on the licensed premises.  
9 Any licensee who desires to conduct such a private party shall  
10 notify the ABLE Commission, in writing, at least ten (10) calendar  
11 days prior to the private party. The notification shall include the  
12 date, time, and purpose of the private party and any other  
13 information the ABLE Commission may deem necessary.

14 G. No special event or caterer licensee shall:

15 1. Purchase or receive any alcoholic beverage other than from a  
16 person holding a wholesaler or Class B wholesaler license issued  
17 pursuant to the provisions of the Oklahoma Alcoholic Beverage  
18 Control Act; provided, a special event or caterer licensee may  
19 purchase wine produced at wineries in this state directly from an  
20 Oklahoma winemaker as provided in Section 3 of Article XXVIII of the  
21 Oklahoma Constitution; or

1           2. Transport alcoholic beverages from the place of purchase to  
2 the licensed premises unless the licensee also holds a private  
3 carrier license issued by the ABLE Commission.

4           H. No person operating a cafe, restaurant, club, or any place  
5 of recreation shall permit any person to be drunk or intoxicated in  
6 the person's place of business.

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

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