

CS for SB 686

1 THE STATE SENATE
2 Wednesday, February 20, 2008

3 Committee Substitute for
4 Senate Bill No. 686

5 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 686 - By: BASS of the
6 Senate and DORMAN and LIEBMANN of the House.

7 [intoxicating liquors - product tastings of wine -
8 effective date]

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

10 SECTION 1. AMENDATORY 37 O.S. 2001, Section 537, as last
11 amended by Section 1, Chapter 141, O.S.L. 2007 (37 O.S. Supp. 2007,
12 Section 537), is amended to read as follows:

13 Section 537. A. No person shall:

- 14 1. Knowingly sell, deliver, or furnish alcoholic beverages to
- 15 any person under twenty-one (21) years of age;
- 16 2. Sell, deliver or knowingly furnish alcoholic beverages to an
- 17 intoxicated person or to any person who has been adjudged insane or
- 18 mentally deficient;
- 19 3. Open a retail container or consume alcoholic beverages on
- 20 the premises of a retail package store;
- 21 4. Import into this state, except as provided for in the
- 22 Oklahoma Alcoholic Beverage Control Act, any alcoholic beverages;
- 23 provided, that nothing herein shall prohibit the importation or
- 24 possession for personal use of not more than one (1) liter of

1 alcoholic beverages upon which the Oklahoma excise tax is
2 delinquent;

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

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

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

21 8. Drink intoxicating liquor in public except on the premises
22 of a licensee of the Alcoholic Beverage Laws Enforcement Commission
23 who is authorized to sell or serve alcoholic beverages by the

1 individual drink or be intoxicated in a public place. This
2 provision shall be cumulative and in addition to existing law;

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

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

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

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

20 B. No licensee of the ABLE Commission shall:

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

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

15 3. Give any alcoholic beverage as a prize, premium or
16 consideration for any lottery, game of chance or skill or any type
17 of competition;

18 4. Advertise or offer "happy hours" or any other means or
19 inducements to stimulate the consumption of alcoholic beverages
20 including:

21 a. deliver more than two drinks to one person at one
22 time,

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

21 Provided that, the provisions of this paragraph shall not prohibit
22 the advertising or offering of food or entertainment in licensed
23 establishments;

1 5. Permit or allow any patron or person to exit the licensed
2 premises with an open container of any alcoholic beverage.
3 Provided~~7~~ that, this prohibition shall not be applicable to closed
4 original containers of alcoholic beverages which are carried from
5 the licensed premises of a bottle club by a patron, closed original
6 wine containers removed from the premises of restaurants, hotels,
7 and motels, or to closed original containers of alcoholic beverages
8 transported to and from the place of business of a licensed caterer
9 by the caterer or an employee of the caterer; or

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

12 C. No package store licensee shall:

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

16 2. Suffer or permit any retail container to be opened, or any
17 alcoholic beverage to be consumed, on the licensed premises, except
18 a package store licensee may:

19 a. conduct product tastings of wine on the licensed
20 premises of the package store licensee during regular
21 business hours, provided:

22 (1) a written notice of a product tasting of wine
23 shall be posted on the licensed premises of the

1 package store licensee and provided to the ABLE
2 Commission no later than four (4) days prior to
3 the product tasting of wine event which clearly
4 states:

5 (a) the type and brand of wine to be tasted,

6 (b) the date and hours the product tasting of
7 wine is to take place, and

8 (c) the address of the premises where the
9 product tasting of wine is to occur,

10 (2) a copy of the notification shall be kept on file
11 and available for inspection on the premises
12 during all product tasting of wine hours,

13 (3) the sample portions at a product tasting of wine
14 shall be limited to no more than one (1) ounce,

15 (4) no charge of any sort shall be made for a sample
16 serving,

17 (5) samples shall be limited to one serving per
18 person for each product of wine offered for
19 sampling, provided that no more than five samples
20 shall be served to the same person at any one
21 product tasting of wine. No samples shall be
22 removed from the licensed premises,

1 (6) at the conclusion of a product tasting of wine,
2 all empty or open bottles of wine used in the
3 tasting shall be removed from the licensed
4 premises. Any partially consumed bottle shall
5 not be offered for sale. Each opened bottle
6 shall be invalidated for sale by writing the word
7 "sample" on the label of the bottle with
8 indelible ink,

9 (7) no person other than the licensee or an agent or
10 employee of the licensee shall dispense or
11 participate in the dispensing of wine at a
12 product tasting. All samples shall be poured
13 from retailer stock. No samples shall be
14 provided by any other licensee or person.
15 Invoices for the product shall be provided to the
16 ABLE Commission upon request, and

17 b. as provided for by rule, it shall be a major
18 administrative violation for any holder of a
19 wholesaler or Class B wholesaler license to provide
20 free wine to a retailer for the purpose of a product
21 tasting as provided in this section. It shall be a
22 major administrative violation for any retailer to
23 accept free wine from any person or holder of a

1 issued with or without fee by an issuer for the use of
2 the cardholder in depositing, obtaining or
3 transferring funds from a consumer banking electronic
4 facility, and

5 b. "nationally recognized credit card" means any
6 instrument or device, whether known as a credit card,
7 credit plate, charge plate or by any other name,
8 issued with or without fee by an issuer for the use of
9 the cardholder in obtaining money, goods, services or
10 anything else of value on credit which is accepted by
11 over one hundred merchants;

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

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

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

6 D. No wholesaler licensee shall:

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

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

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

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

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

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

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

9 5. Allow any person under twenty-one (21) years of age to enter
10 into, remain within or loiter about the designated bar area of the
11 licensed premises, except for persons who incidentally pass through
12 the designated area.

13 The prohibition in this subsection against persons under twenty-
14 one (21) years of age entering or remaining within the designated
15 bar area of the licensed premises shall not apply, if the licensed
16 premises are closed to the public during a time the premises are
17 legally permitted to be open for business and the premises are used
18 for a private party at which alcoholic beverages may be served to
19 persons twenty-one (21) years of age or older. Any alcoholic
20 beverages served at a private party on the licensed premises may be
21 purchased from the licensee at a negotiated price or purchased
22 privately and served at the private party on the licensed premises.
23 Any licensee who desires to conduct such a private party shall

1 notify the ABLE Commission, in writing, at least ten (10) calendar
2 days prior to the private party. The notification shall include the
3 date, time, and purpose of the private party and any other
4 information the ABLE Commission may deem necessary.

5 F. No bottle club licensee shall:

6 1. Use or allow the use of any mark or label on a container of
7 alcoholic beverage which does not clearly and precisely indicate the
8 nature of the contents or which might deceive or conceal the nature,
9 composition, quantity, age or quality of any such beverage;

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

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

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

17 5. Sell any alcoholic beverage;

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

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

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

1 9. 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 G. No special event or caterer licensee shall:

22 1. Purchase or receive any alcoholic beverage other than from a
23 person holding a wholesaler or Class B wholesaler license issued

1 pursuant to the provisions of the Oklahoma Alcoholic Beverage
2 Control Act; provided, a special event or caterer licensee may
3 purchase wine produced at wineries in this state directly from an
4 Oklahoma winemaker as provided in Section 3 of Article XXVIII of the
5 Oklahoma Constitution; or

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

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

12 SECTION 2. This act shall become effective November 1, 2008.

13 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & LABOR, dated 2-18-08 -
14 DO PASS, As Amended and Coauthored.