

ENROLLED SENATE
BILL NO. 1964

By: Ford of the Senate

and

Jones of the House

An Act relating to intoxicating liquor; amending 37 O.S. 2001, Section 594, which relates to caterer license; allowing caterer license for certain purpose on licensed and unlicensed premises; defining term; disallowing caterer license for alcohol sales only; requiring food sales to exceed certain percentage of total combined sales in calendar year for license renewal; stating caterer not required to prepare food for every event; requiring annual sales report with certain revenue information; counting low-point beer separately from food and alcoholic beverage sales; designating time for submitting annual reporting; prohibiting renewal of caterer license for failure to complete report; requiring monthly event report with certain information; making certain events reportable within certain period of event; stating when to file monthly reports; providing reports be submitted electronically; providing exception to electronic reporting; requiring certain records retention for certain period; authorizing suspending caterer license for failure to make certain reports; setting term of suspension; declining renewal of caterer license when alcoholic beverage sales exceed certain percentage of combined sales; allowing licensed caterer to provide alcoholic beverage sales for certain person without license under certain conditions; requiring reasonable steps for supervision by licensed employee; disallowing discipline for failing to provide supervision; making caterer liable for violations of applicant; requiring

written agreement be submitted to ABLE Commission within certain time; limiting term for use of licensed caterer on unlicensed premises; amending 37 O.S. 598, as amended by Section 29, Chapter 460, O.S.L. 2002 (37 O.S. Supp. 2009, Section 598), which relates to prohibition of persons under age in bar areas; deleting certain definition; providing low-point beer be counted separate from food or alcoholic beverages; authorizing certain bar area for certain period of time for new licensee; requiring proof for continued bar area; allowing purpose of licensee's business to convert to sale of alcoholic beverages upon failure to satisfy burden of proof; and declaring an emergency.

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

SECTION 1. AMENDATORY 37 O.S. 2001, Section 594, is amended to read as follows:

Section 594. A. 1. A caterer license may be issued to any corporation, association, individual, or limited liability company, or any type of partnership person for the purpose of sale, delivery or distribution of alcoholic beverages for on premises consumption incidental to the sale or distribution of food on a premises not licensed by the ABLE Commission. For purposes of this section, "incidental to the sale or distribution of food" means food sales constituting at least thirty-five percent (35%) of the caterer's total combined annual sales. A caterer license shall not be issued to a person whose main purpose is the sale of alcoholic beverages or low-point beer.

2. A caterer license may only be issued to those persons that prepare, sell and distribute food for consumption either on a licensed or unlicensed premises. In order to renew a caterer license, annual food sales must constitute at least thirty-five percent (35%) of the caterer's total combined sales based on the most recent calendar year. A caterer shall not be required to

prepare, sell and distribute food at every catered event as long as the caterer satisfies the requirement set forth in this section.

3. Each caterer shall submit an annual sales report containing revenue attributable to alcoholic beverages, food, low-point beer, and all other revenues attributable to the catering service. For purposes of this section, low-point beer shall be counted separately, and it shall not be counted either as food or an alcoholic beverage. The annual sales report must be submitted thirty (30) days prior to expiration of the caterer license on forms prescribed by the ABLE Commission. The caterer license may not be renewed if the caterer fails to provide complete or sufficient financial data.

4. Each caterer shall submit a monthly event report containing information on all events scheduled for the subsequent month. If an event is scheduled after the first day of the month for an event to occur in the same month, then the caterer shall report that event within twenty-four (24) hours of scheduling the event or within twenty-four (24) hours prior to the event, whichever occurs first. The monthly event report shall be submitted on the first day of each month.

5. All reports shall be submitted electronically on forms prescribed by the ABLE Commission. Provided, if the caterer does not have access to the Internet, then monthly reports must be submitted by facsimile to the ABLE Commission's office in Oklahoma City, in which case the caterer must retain a copy of the facsimile confirmation sheet for at least twelve (12) months.

6. Any caterer who fails to submit a monthly report shall have the caterer license automatically suspended until such time that the caterer has fully complied with all reporting requirements. Any caterer whose annual food sales do not exceed thirty-five percent (35%) of his or her total annual combined sales shall not have the caterer's license renewed.

B. The ABLE Commission shall adopt rules governing the application for and the issuance of caterer licenses.

C. The restrictions and regulations which apply to the sale of mixed beverages on the premises of a mixed beverage licensee also

apply to the sale under the authority of a caterer license. Any act which if done on the premises of a mixed beverage licensee would be a ground for revocation or suspension of the mixed beverage license is a ground for revocation or suspension of a caterer license.

D. If the premises, where the event being catered is held, are already operating pursuant to another type of license issued by the ABLE Commission, the caterer and other said licensee shall both be responsible for the actions of the caterer and shall both be subject to penalties for violations, by the caterer, of the Oklahoma Alcoholic Beverage Control Act and any rules promulgated thereto.

E. A caterer licensee may not store alcoholic beverages unless said licensee has a storage license issued by the ABLE Commission.

F. A caterer may provide alcoholic beverage sales on the premises of a person currently applying for a mixed beverage license, provided the following terms have been satisfied:

1. The caterer shall take reasonable steps to ensure that the mixed beverage applicant uses only licensed employees to perform licensable activities while using the caterer's license. The caterer shall use his or her best efforts to attempt to have a licensed employee on-site supervising the sale of such caterer's alcoholic beverages at all times, but the caterer shall not be disciplined for failing to have a licensed employee on-site. The caterer expressly acknowledges that he or she is liable for all violations of ABLE Commission statutes and rules that are committed by the mixed beverage applicant and its employees during this period;

2. The caterer and mixed beverage applicant must submit to the ABLE Commission a written agreement setting forth all the terms of the catering agreement at least twenty-four (24) hours prior to the commencement of the catered event; and

3. The caterer may not provide alcoholic beverage sales on the unlicensed premises of the mixed beverage applicant for more than sixty (60) days, or after the applicant's license has been denied, whichever occurs first.

SECTION 2. AMENDATORY 37 O.S. 2001, Section 598, as amended by Section 29, Chapter 460, O.S.L. 2002 (37 O.S. Supp. 2009, Section 598), is amended to read as follows:

Section 598. A. 1. If the premises of a licensee of the Alcoholic Beverage Laws Enforcement Commission contains a separate or enclosed lounge or bar area, which has as its main purpose the sale or distribution, of alcoholic beverages for on-premises consumption, notwithstanding that as an incidental service, meals or short order foods are made available therein, no person under twenty-one (21) years of age shall be admitted to such area, except for members of a musical band employed or hired as provided in paragraph 2 of subsection B of Section 537 of this title when the band is to perform within such area, or persons under twenty-one (21) years of age who are on the licensed premises for the limited purpose of performing maintenance, construction, remodeling, painting or other similar services relating to the building or equipment installation, repair or maintenance on the premises during those hours when the licensed establishment is closed for business. The provisions of this section shall not prohibit persons under twenty-one (21) years of age from being admitted to an area which has as its main purpose some objective other than the sale or mixing or serving of said beverages, in which sales or serving of said beverages are incidental to the main purpose, as long as the persons under twenty-one (21) years of age are not sold or served alcoholic beverages. The incidental service of food in the bar area shall not exempt a licensee from the provisions of this section. The ABLE Commission shall have the authority to designate the portions of the premises of a licensee where persons under twenty-one (21) years of age shall not be admitted pursuant to this section. ~~For purposes of this section only, the term "alcoholic beverages" shall include low-point beer, as defined in Section 163.2 of this title~~ When determining a licensee's main purpose, low-point beer sales shall be counted separately, and it shall not be considered a food or an alcoholic beverage.

2. A new licensee that claims as its main purpose some objective other than the sale of alcoholic beverages may be granted a separate or enclosed lounge or bar area for a period of ninety (90) days. At the end of that ninety-day period, the licensee shall have the burden of showing that the business continues to qualify for a separate or enclosed bar area. If the licensee fails to

satisfy this burden, then that licensee's main purpose shall automatically convert to the sale of alcoholic beverages.

B. Except as otherwise provided, an admission charge shall not be considered in any calculation designed to determine the main purpose of an establishment pursuant to subsection A of this section. As used in this section, "admission charge" means any form of consideration received by an establishment from a person in order for that person to gain entrance into the establishment.

C. The provisions of subsection B of this section shall not apply:

1. If only persons eighteen (18) years of age or older are permitted to enter the licensed premises; provided however, if the licensee is claiming an exception from the requirements of subsection B of this section pursuant to this paragraph and fails to restrict the entry by persons under age eighteen (18) into the licensed premises, the ABLE Commission shall designate that only persons twenty-one (21) years of age or older are allowed on the licensed premises;

2. If the licensed premises are owned or operated by a service organization or fraternal establishment which is exempt under Section 501(c)(19), (8), or (10) of the Internal Revenue Code; or

3. To a public event held in a facility owned or operated by any agency, political subdivision or public trust of this state.

D. The ABLE Commission shall promulgate rules necessary to implement the provisions of this section.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 19th day of May, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 24th day of May, 2010.

Presiding Officer of the House
of Representatives