

EHB 3383

1 THE STATE SENATE
2 Monday, March 29, 2010

3 ENGROSSED

4 House Bill No. 3383

5 As Amended

6 ENGROSSED HOUSE BILL NO. 3383 - By: Terrill of the House and
7 Barrington of the Senate.

8 [intoxicating liquors - prohibited acts -
9 emergency]

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

11 SECTION 1. AMENDATORY 37 O.S. 2001, Section 537, as last
12 amended by Section 1, Chapter 141, O.S.L. 2007 (37 O.S. Supp. 2009,
13 Section 537), is amended to read as follows:

14 Section 537. A. No person shall:

- 15 1. Knowingly sell, deliver, or furnish alcoholic beverages to
- 16 any person under twenty-one (21) years of age;
- 17 2. Sell, deliver or knowingly furnish alcoholic beverages to an
- 18 intoxicated person or to any person who has been adjudged insane or
- 19 mentally deficient;
- 20 3. Open a retail container or consume alcoholic beverages on
- 21 the premises of a retail package store;
- 22 4. Import into this state, except as provided for in the
- 23 Oklahoma Alcoholic Beverage Control Act, any alcoholic beverages;
- 24 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; provided, this prohibition
13 shall not apply to the alcoholic beverages classified as household
14 goods by military personnel when entering Oklahoma from temporary
15 active assignment outside the contiguous United States;

16 7. Knowingly transport in any vehicle upon a public highway,
17 street or alley any alcoholic beverage except in the original
18 container which shall not have been opened and the seal upon which
19 shall not have been broken and from which the original cap or cork
20 shall not have been removed, unless the opened container be in the
21 rear trunk or rear compartment, which shall include the spare tire
22 compartment in a vehicle commonly known as a station wagon and panel

1 truck, or any outside compartment which is not accessible to the
2 driver or any other person in the vehicle while it is in motion;

3 8. Drink intoxicating liquor in public except on the premises
4 of a licensee of the Alcoholic Beverage Laws Enforcement Commission
5 who is authorized to sell or serve alcoholic beverages by the
6 individual drink or be intoxicated in a public place. This
7 provision shall be cumulative and in addition to existing law;

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

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

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

21 12. Knowingly possess any bottle club membership card required
22 to be issued by the ABLE Commission, which has been manufactured,

1 counterfeited, imitated or in any way duplicated without the
2 permission of the Commission.

3 B. No licensee of the ABLE Commission shall:

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

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

21 3. Give any alcoholic beverage as a prize, premium or
22 consideration for any lottery, game of chance or skill or any type
23 of competition;

1 4. Advertise or offer "happy hours" or any other means or
2 inducements to stimulate the consumption of alcoholic beverages
3 including:

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

1 f. encourage or permit, on the licensed premises, any
2 game or contest which involves drinking or the
3 awarding of drinks as prizes.

4 Provided that the provisions of this paragraph shall not prohibit
5 the advertising or offering of food or entertainment in licensed
6 establishments;

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

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

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

18 C. No package store licensee shall:

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

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

1 3. Sell, or keep package store premises open for the purpose of
2 selling, any alcoholic beverages at any hour other than between the
3 hours of 10:00 a.m. and 9:00 p.m. Monday through Saturday; provided,
4 that no such sales shall be made, or package store premises be
5 allowed to remain open for the purpose of making such sales, on the
6 day of any General, Primary, Runoff Primary or Special Election
7 while the polls are open whether on a national, state, county or
8 city election or on New Year's Day, Memorial Day, the Fourth of
9 July, Labor Day, Thanksgiving Day or Christmas Day;

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

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

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

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

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

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

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

1 D. No wholesaler licensee shall:

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

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

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

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

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

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

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

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

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

23 F. No bottle club licensee shall:

- 1 1. Use or allow the use of any mark or label on a container of
2 alcoholic beverage which does not clearly and precisely indicate the
3 nature of the contents or which might deceive or conceal the nature,
4 composition, quantity, age or quality of any such beverage;
- 5 2. Act as an agent for any bottle club member and purchase any
6 alcoholic beverage for the member;
- 7 3. Use or allow the use of any pool system of storage or
8 purchase of alcoholic beverages;
- 9 4. Allow any person to enter or remain in the designated bar or
10 lounge area of the club unless that person possesses a valid
11 membership card for that club issued by the club;
- 12 5. Sell any alcoholic beverage;
- 13 6. Deliver or furnish to any club member any alcoholic beverage
14 that does not belong to the member;
- 15 7. Serve alcoholic beverages to any person who does not possess
16 a valid membership card for that club issued by the club;
- 17 8. Issue a membership card for the club to a person under
18 twenty-one (21) years of age; or
- 19 9. Allow any person under twenty-one (21) years of age to enter
20 into, remain within or loiter about the designated bar area of the
21 licensed premises, except for members of a musical band employed or
22 hired as provided in paragraph 2 of subsection B of this section
23 when the band is to perform within such area.

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

16 G. No special event or caterer licensee shall:

17 1. Purchase or receive any alcoholic beverage other than from a
18 person holding a wholesaler or Class B wholesaler license issued
19 pursuant to the provisions of the Oklahoma Alcoholic Beverage
20 Control Act; provided, a special event or caterer licensee may
21 purchase wine produced at wineries in this state directly from an
22 Oklahoma winemaker as provided in Section 3 of Article XXVIII of the
23 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. It being immediately necessary for the preservation
8 of the public peace, health and safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

11 COMMITTEE REPORT BY: COMMITTEE ON VETERANS & MILITARY AFFAIRS, dated
12 3-24-10 - DO PASS, As Amended.