

1 ENGROSSED SENATE  
2 BILL NO. 1667

By: Johnson (Rob) of the Senate

3 and

4 Jackson of the House

5  
6 An Act relating to alcoholic beverages; amending 37  
7 O.S. 2011, Sections 163.7, 163.10, 514 and 521, which  
8 relate to permits and licenses; limiting and  
9 construing permits or licenses; prohibiting  
interference with low-point beer and alcoholic  
beverages; providing an effective date; and declaring  
an emergency.

10

11

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

13 SECTION 1. AMENDATORY 37 O.S. 2011, Section 163.7, is  
14 amended to read as follows:

15 Section 163.7. In addition to the excise tax payable under  
16 Section 163.1 et seq. of this title, and in addition to the license  
17 required to be procured from the judge of the district court, the  
18 following permits shall be required and the following annual license  
19 taxes shall be payable to the Oklahoma Tax Commission with respect  
20 to low-point beer; provided, any such permit issued prior to  
21 November 1, 1995, with respect to low-point beer shall be valid  
22 until it expires:

23 1. Manufacturers: Every manufacturer, located and doing  
24 business in this state, shall, before commencing the manufacture of

1 low-point beer, obtain from the Tax Commission a permit to engage in  
2 such manufacture. As a condition of the issuance of this permit,  
3 such manufacturer shall pay to the Tax Commission a license tax of  
4 Four Hundred Fifty Dollars (\$450.00), which shall cover a three-year  
5 period commencing with the effective date of such permit. This  
6 permit must be renewed and the license tax paid thereafter at the  
7 expiration of the preceding permit and license tax period. Each and  
8 every other manufacturer of such beverages, coming within the  
9 provisions of Section 163.1 et seq. of this title, shall before  
10 selling or offering for sale such beverages within the State of  
11 Oklahoma, qualify with the Secretary of State of the State of  
12 Oklahoma for a permit to do business within the State of Oklahoma  
13 and, after so qualifying, shall obtain a permit or license from the  
14 Tax Commission and, in addition to any other license, taxes or fees,  
15 pay therefor a license tax of Five Hundred Dollars (\$500.00), which  
16 shall cover a one-year period commencing with the effective date of  
17 such permit. The permit or license shall be for the privilege of  
18 doing business in Oklahoma as a manufacturer of low-point beer. The  
19 permit must be renewed and the license tax paid annually thereafter  
20 at the expiration of the preceding permit and license tax period.  
21 The receipt of payment of such permit or license shall be on file  
22 with the Tax Commission before such manufacturer shall sell, or  
23 offer for sale, such beverages to any person within the State of  
24 Oklahoma. Provided, a manufacturer located and doing business in

1 this state may sell not more than five thousand (5,000) barrels  
2 annually of its own products directly to consumers by procuring a  
3 retail license.

4 Every manufacturer, located and doing business outside the State  
5 of Oklahoma, desiring to pay the excise tax on sales to retail  
6 dealers, as provided for in Section 163.1 et seq. of this title,  
7 shall procure annually a permit and pay annually the license tax  
8 required of wholesalers, as provided for under this section. The  
9 payment of such fee shall be in addition to the payment of the  
10 license fee or tax in the sum of Five Hundred Dollars (\$500.00) as  
11 provided herein;

12 2. Wholesalers: Every wholesaler, located and doing business  
13 in this state, must annually obtain from the Tax Commission a permit  
14 to sell low-point beer. As a condition of the issuance of this  
15 permit, such wholesaler shall pay to the Tax Commission a license  
16 fee of Two Hundred Fifty Dollars (\$250.00) which shall cover a one-  
17 year period commencing with the effective date of such permit. The  
18 permit must be renewed and the license tax paid annually thereafter  
19 at the expiration of the preceding permit and license tax period.  
20 The fee shall be reduced by seventy-five percent (75%) if the  
21 applicant is a holder of a license to manufacture low-point beer and  
22 is located and doing business in this state.

23 Every wholesaler, located and doing business outside the state  
24 desiring to pay the excise tax on sales to retail dealers, as

1 provided for in Section 163.1 et seq. of this title, shall procure  
2 annually a permit and pay annually the license tax required of  
3 wholesalers located and doing business in this state.

4 Wholesalers within this state shall be required to secure an  
5 annual permit and must pay an annual license tax for each city or  
6 incorporated town from which deliveries of low-point beer are made  
7 to retail dealers.

8 Permits issued to wholesalers shall not be transferable from one  
9 person to another person but shall be transferable from one location  
10 to another location; and

11 3. Retail Dealers: Every retail dealer shall, before offering  
12 low-point beer for sale to the public, obtain from the Tax  
13 Commission a permit to engage in such sales, and shall pay to the  
14 Tax Commission, in advance of the issuance of the permit, the  
15 license tax, as follows:

16 a. each retail dealer who sells low-point beer, on  
17 draught and in original packages, for consumption on  
18 or off the premises, shall obtain a permit which shall  
19 be valid for a period of three (3) years and shall pay  
20 a license tax of Four Hundred Dollars (\$400.00) for  
21 every permit issued or renewed on or after July 1,  
22 2003, but prior to July 1, 2006, of which One Hundred  
23 Dollars (\$100.00) shall be deposited in the Community-  
24 based Substance Abuse Revolving Fund established in

1                   Section ~~2 of this act~~ 2-311 of Title 43A of the  
2                   Oklahoma Statutes. The fee for every permit issued or  
3                   renewed on or after July 1, 2006, shall be Five  
4                   Hundred Dollars (\$500.00), of which Two Hundred  
5                   Dollars (\$200.00) shall be deposited in the Community-  
6                   based Substance Abuse Revolving Fund,

7                   b. each retail dealer who sells such beverages in  
8                   original packages only for consumption on or off the  
9                   premises shall obtain a permit which shall be valid  
10                  for a period of three (3) years and shall pay a  
11                  license tax of Two Hundred Fifty Dollars (\$250.00) for  
12                  each permit issued or renewed on or after July 1,  
13                  2003, but before July 1, 2006, of which One Hundred  
14                  Dollars (\$100.00) shall be deposited in the Community-  
15                  based Substance Abuse Revolving Fund. The fee for  
16                  every permit issued on or after July 1, 2006, shall be  
17                  Three Hundred Fifty Dollars (\$350.00), of which Two  
18                  Hundred Dollars (\$200.00) shall be deposited in the  
19                  Community-based Substance Abuse Revolving Fund,

20                  c. each retail dealer who sells low-point beer purchased  
21                  from a licensed manufacturer or licensed wholesaler  
22                  for consumption on or off the premises and who sells  
23                  low-point beer manufactured by the retail dealer for  
24                  consumption on or off the premises shall obtain a

1 permit which shall be valid for a period of three (3)  
2 years and shall pay a license fee of Five Hundred  
3 Fifty Dollars (\$550.00) for each permit issued or  
4 renewed on or after July 1, 2003, but before July 1,  
5 2006, of which One Hundred Dollars (\$100.00) shall be  
6 deposited in the Community-based Substance Abuse  
7 Revolving Fund. The fee for every permit issued on or  
8 after July 1, 2006, shall be Six Hundred Fifty Dollars  
9 (\$650.00), of which Two Hundred Dollars (\$200.00)  
10 shall be deposited in the Community-based Substance  
11 Abuse Revolving Fund. Provided, a retail dealer  
12 licensed pursuant to this subparagraph shall not  
13 manufacture more than five thousand (5,000) barrels of  
14 low-point beer per year. A retail dealer, that has  
15 obtained a permit pursuant to this subparagraph, may  
16 sell low-point beer manufactured by the retail dealer,  
17 at any of the retail dealer's places of business, as  
18 defined in Section 163.8 of this title, or any other  
19 place owned and operated by an entity which has common  
20 owners with the licensed dealer, regardless of which  
21 place of business brews the beverage. "Common owners"  
22 means that the owners at each place or entity together  
23 own more than fifty percent (50%) of the interest in  
24 each place or entity that has a permit issued pursuant

1 to this subparagraph. A retail dealer, that has  
2 obtained a permit pursuant to this subparagraph, may  
3 sell low-point beer manufactured by the same retailer  
4 pursuant to special licenses issued pursuant to  
5 subparagraph d of this paragraph,

6 d. special licenses, as provided, may be issued for the  
7 sum of Five Dollars (\$5.00) per day for each license;  
8 provided, that in the event any state or county fair  
9 association shall meet for more than five (5) days in  
10 any year, a special license for the sale of such  
11 beverages shall be issued for the sum of Twenty-five  
12 Dollars (\$25.00),

13 e. each retail dealer who sells such beverages in  
14 original packages and not for consumption on the  
15 premises, shall obtain a permit which shall be valid  
16 for a period of three (3) years and shall pay a  
17 license tax of One Hundred Thirty Dollars (\$130.00)  
18 for each permit issued or renewed on or after July 1,  
19 2003, but prior to July 1, 2006, of which One Hundred  
20 Dollars (\$100.00) shall be deposited in the Community-  
21 based Substance Abuse Revolving Fund. The fee for  
22 every permit issued or renewed on or after July 1,  
23 2006, shall be Two Hundred Thirty Dollars (\$230.00),  
24 of which Two Hundred Dollars (\$200.00) shall be

1 deposited in the Community-based Substance Abuse  
2 Revolving Fund. It shall be unlawful for such off-  
3 premise dealer to allow any bottle, can, or original  
4 package to be broken or opened, or to allow any of  
5 such low-point beer to be consumed, in or upon the  
6 premises described in such permit; provided, however,  
7 a manufacturer located and doing business in this  
8 state and selling its own products for off-premises  
9 consumption may serve visitors on the premises free  
10 samples of low-point beer produced on the premises  
11 provided such samples shall not exceed twelve (12)  
12 fluid ounces per customer per visit,

13 f. a retail dealer who has obtained a permit pursuant to  
14 this paragraph and who ceases to offer low-point beer  
15 for sale to the public shall be entitled to receive a  
16 refund of the permit fee from the Tax Commission  
17 prorated with respect to the amount of time remaining  
18 until expiration of the permit, upon surrender of the  
19 permit to the Oklahoma Tax Commission. The manner and  
20 prorated refund shall be prescribed by the Tax  
21 Commission, and

22 g. a retail dealer who has obtained a permit pursuant to  
23 this paragraph prior to July 1, 2003, shall not be  
24 subject to the increased fees provided for in

1           subparagraphs a, b, c or e until the permit is  
2           renewed.

3           Except as provided in this section, the permit required from the  
4 judge of the district court under Section 163.11 of this title and  
5 the license fee permissible by municipal corporations pursuant to  
6 Section 163.10 of this title, no license or permit or fee related  
7 thereto shall be required in relation to the sale, distribution,  
8 possession or handling of low-point beer, as defined by Section  
9 163.2 of this title by any agency, instrumentality or political  
10 subdivision of this state and no agency, instrumentality or  
11 political subdivision of this state shall interfere with the  
12 Oklahoma Tax Commission's regulation of, or a wholesaler's  
13 performance of, the sale, distribution, possession, handling or  
14 marketing of low-point beer on any premises of any retail dealer or  
15 permit holder under Section 163.7 of this title.

16           SECTION 2.           AMENDATORY           37 O.S. 2011, Section 163.10, is  
17 amended to read as follows:

18           Section 163.10. No tax, license fee, or charge upon the  
19 distribution, possession, or handling of low-point beer, as defined  
20 by Section 163.2 of this title, shall be levied or collected by any  
21 agency, instrumentality or political subdivision of this state,  
22 except the sales tax, the general ad valorem tax, and the county  
23 low-point beer permit fee. Municipal corporations may require the  
24 payment of an annual license fee of not more than Twenty Dollars

1 (\$20.00) from retail dealers, as defined by Section 163.2 of this  
2 title, selling low-point beer for consumption on or off the  
3 premises, and an annual license fee of not more than Ten Dollars  
4 (\$10.00) from retail dealers, as defined by Section 163.2 of this  
5 title, selling ~~said~~ the beverages in original packages and not for  
6 consumption on the premises.

7 SECTION 3. AMENDATORY 37 O.S. 2011, Section 514, is  
8 amended to read as follows:

9 Section 514. The Alcoholic Beverage Laws Enforcement Commission  
10 shall have the following powers and duties:

11 1. To supervise, inspect, and regulate every phase of the  
12 business of manufacturing, importing, exporting, transporting,  
13 storing, selling, distributing, and possessing for the purpose of  
14 sale, all alcoholic beverages which shall be necessary and proper to  
15 carry out the purposes of the Oklahoma Alcoholic Beverage Control  
16 Act;

17 2. To promulgate rules and regulations, in the manner herein  
18 provided, to carry out the purposes of the Oklahoma Alcoholic  
19 Beverage Control Act;

20 3. To have the sole authority to issue any license provided for  
21 in the Oklahoma Alcoholic Beverage Control Act and except as  
22 provided in Sections 554.1 and 554.2 of this title with respect to  
23 cities, towns and counties, and except as may be provided under  
24 Title 68 with respect to the Oklahoma Tax Commission, no other

1 agency, instrumentality or political subdivision of this state shall  
2 be authorized to issue any license or permit allowing any licensee  
3 to engage in any activity covered by the Oklahoma Alcoholic Beverage  
4 Control Act anywhere within the State of Oklahoma;

5 4. To refuse to issue any license provided for in the Oklahoma  
6 Alcoholic Beverage Control Act for cause provided for in ~~said act~~  
7 the Oklahoma Alcoholic Beverage Control Act;

8 5. To revoke or suspend, for cause after hearing, any license  
9 issued under the authority of the Oklahoma Alcoholic Beverage  
10 Control Act;

11 6. To prescribe the forms of applications for licenses and the  
12 information to be shown thereon, and of all reports which it deems  
13 necessary in administering the Oklahoma Alcoholic Beverage Control  
14 Act;

15 7. To fix standards, not in conflict with those prescribed by  
16 any law of this state or of the United States, to secure the use of  
17 proper ingredients and methods of manufacture and dispensing of  
18 alcoholic beverages;

19 8. To make seizures of alcoholic beverages manufactured, sold,  
20 possessed, imported, or transported in violation of the Oklahoma  
21 Alcoholic Beverage Control Act, and apply for the confiscation  
22 thereof whenever required by ~~said act~~ the Oklahoma Alcoholic  
23 Beverage Control Act, and cooperate in the prosecution of offenders  
24 before any court of competent jurisdiction;

1           9. To submit to the Governor and members of the State  
2 Legislature annual or semiannual reports upon request of the  
3 Governor;

4           10. To inspect or cause to be inspected any premises where  
5 alcoholic beverages are manufactured, stored, distributed, sold,  
6 dispensed or served;

7           11. In the conduct of any hearing authorized to be held by the  
8 ABLE Commission, to examine or cause to be examined, under oath, any  
9 person, and to examine or cause to be examined books and records of  
10 any licensee; to hear testimony and take proof material for the ABLE  
11 Commission's information and the discharge of its duties hereunder;  
12 to administer or cause to be administered oaths; and for any such  
13 purposes to issue subpoenas for the attendance of witnesses and the  
14 production of books or records which shall be effective in any part  
15 of the state; and any district court or any judge thereof, either in  
16 term or vacation, may by order duly entered require the attendance  
17 of witnesses and the production of relevant books or records  
18 subpoenaed by the ABLE Commission, and the court or judge may compel  
19 obedience to ~~its or his~~ the order by proceedings for contempt;

20           12. To prescribe the kind and size of retail containers of  
21 alcoholic beverages other than beer which may be purchased,  
22 possessed and sold by a licensee;

23           13. To prescribe by regulations, in addition to those herein  
24 required, the kinds of records to be kept and reports to be rendered

1 by licensees, and the information to be shown therein; provided,  
2 that the period for which all such records and reports be retained  
3 shall not be less than five (5) years;

4 14. To gather, compile and print such statistical data as may  
5 in the opinion of the ABLE Commission be needed or useful, and  
6 prescribe charges or fees to be collected from any person or company  
7 to whom such data shall be provided. No reports shall contain sales  
8 information of either wholesalers, retailers, mixed beverage  
9 licensees, caterers or special event licensees by name or license  
10 number;

11 15. To educate persons employed by licensees to serve alcoholic  
12 beverages as to the provisions of Article XXVIII of the Oklahoma  
13 Constitution and the Oklahoma Alcoholic Beverage Control Act, with  
14 emphasis on recognizing and preventing intoxication and particular  
15 emphasis on those provisions prohibiting the serving of alcoholic  
16 beverages to minors. The ABLE Commission may contract with one or  
17 more persons to perform the duties specified in this paragraph; and

18 16. To exercise all other powers and duties conferred by the  
19 Oklahoma Alcoholic Beverage Control Act, and all powers incidental,  
20 convenient or necessary to enable it to administer or carry out any  
21 of the provisions of the Oklahoma Alcoholic Beverage Control Act.

22 SECTION 4. AMENDATORY 37 O.S. 2011, Section 521, is  
23 amended to read as follows:

24

1 Section 521. A. A brewer license shall authorize the holder  
2 thereof: To manufacture, bottle, package, and store beer on  
3 licensed premises; to sell beer in this state to holders of Class B  
4 wholesaler licenses and retail licenses and to sell beer out of this  
5 state to qualified persons.

6 B. A distiller license shall authorize the holder thereof: To  
7 manufacture, bottle, package, and store spirits on licensed  
8 premises; to sell spirits in this state to licensed wholesalers and  
9 manufacturers only; to sell spirits out of this state to qualified  
10 persons; to purchase from licensed distillers and rectifiers in this  
11 state, and import spirits from without this state for manufacturing  
12 purposes in accordance with federal laws and regulations.

13 C. A winemaker license shall authorize the holder thereof: To  
14 manufacture (including such mixing, blending and cellar treatment as  
15 authorized by federal law), bottle, package, and store on licensed  
16 premises wine containing not more than twenty-four percent (24%)  
17 alcohol by volume, provided the bottle or package sizes authorized  
18 shall be limited to the capacities approved by the United States  
19 Alcohol and Tobacco Tax and Trade Bureau; to sell wine in this state  
20 to licensed wholesalers and manufacturers; to sell bottles of wine  
21 produced at the winery from grapes and other fruits and berries  
22 grown in this state, if available, to consumers on the premises of  
23 the winery; to serve visitors on the licensed premises samples of  
24 wine produced on the premises; to serve samples of wine produced at

1 the winery at festivals and trade shows; to sell wine produced at  
2 the winery, in original sealed containers, at festivals and trade  
3 shows; to sell wine out of this state to qualified persons; to  
4 purchase from licensed winemakers, distillers and rectifiers in this  
5 state, and to import into this state wine, brandy and fruit spirits  
6 for use in manufacturing in accordance with federal laws and  
7 regulations; provided, a winemaker either within or without this  
8 state that annually produces no more than ten thousand (10,000)  
9 gallons of wine may elect to sell and self-distribute the wine  
10 produced by such winemaker directly to licensed retail package  
11 stores and restaurants in this state; and provided further that:

12       a. any such winemaker which elects to directly sell its  
13 wine to package stores and restaurants shall not also  
14 use a licensed wholesale distributor as a means of  
15 distribution, and shall be required to sell its wines  
16 to every package store and restaurant licensee who  
17 desires to purchase the same, on the same price basis  
18 and without discrimination, and

19       b. if a winemaker or winery sells directly to a retail  
20 package store or restaurant, the winemaker shall  
21 transport the wine from the winemaker's winery to the  
22 premises where the wine is to be delivered only in  
23 vehicles owned or leased by the winemaker and not by  
24 common or private contract carrier and shall obtain

1 all necessary permits as required by the Oklahoma  
2 Alcoholic Beverage Control Act, and

3 c. if the production volume limit applicable to  
4 winemakers is ruled to be unconstitutional by a court  
5 of competent jurisdiction, then no winemaker shall be  
6 permitted to directly sell its wine to retail package  
7 stores or restaurants in this state.

8 D. A winemaker self-distribution license shall authorize a  
9 licensed winemaker within or without this state which is permitted  
10 by Section 3 of Article XXVIII of the Oklahoma Constitution and  
11 paragraph 3 of subsection C of this section, to distribute its wine  
12 directly to retail package stores and restaurants in this state and  
13 that elects to do so, to sell and deliver its wines directly to  
14 licensed retail package stores and restaurants in this state in full  
15 case lots only, and in accordance with the provisions of the  
16 Oklahoma Alcoholic Beverage Control Act and such rules as the  
17 Oklahoma Alcoholic Beverage Laws Enforcement (ABLE) Commission shall  
18 adopt.

19 E. A rectifier license shall authorize the holder thereof: To  
20 rectify spirits and wines, bottle, package, and store same on the  
21 licensed premises; to sell spirits and wines in this state to  
22 licensed wholesalers and manufacturers only; to sell spirits and  
23 wines out of this state to qualified persons; to purchase from  
24 licensed manufacturers in this state; and to import into this state

1 for manufacturing purposes spirits and wines in accordance with  
2 federal laws and regulations.

3 F. 1. A wholesaler license shall authorize the holder thereof:  
4 To purchase and import into this state spirits and wines from  
5 persons authorized to sell same who are the holders of a nonresident  
6 seller license, and their agents who are the holders of  
7 manufacturers agent licenses; to purchase spirits and wines from  
8 licensed distillers, rectifiers and winemakers in this state; to  
9 purchase spirits and wines from licensed wholesalers, to the extent  
10 set forth in paragraphs 2 and 3 of this subsection; to sell in  
11 retail containers in this state to retailers, mixed beverage,  
12 caterer, special event, hotel beverage or airline/railroad beverage  
13 licensees, spirits and wines which have been received and unloaded  
14 at the bonded warehouse facilities of the wholesaler before such  
15 sale; to sell to licensed wholesalers, to the extent set forth in  
16 paragraphs 2 and 3 of this subsection, spirits and wines which have  
17 been received and unloaded at the bonded warehouse facilities of the  
18 wholesaler before such sale; and to sell spirits and wines out of  
19 this state to qualified persons. Provided, however, sales of  
20 spirits and wine in containers with a capacity of less than one-  
21 twentieth (1/20) gallon by a holder of a wholesaler license shall be  
22 in full case lots and in the original unbroken case. Wholesalers  
23 shall be authorized to place such signs outside their place of  
24

1 business as are required by Acts of Congress and by such laws and  
2 regulations promulgated under such Acts.

3 2. Wholesalers are prohibited from purchasing annually in  
4 excess of fifteen percent (15%) of their total spirits inventory and  
5 fifteen percent (15%) of their total wine inventory from one or more  
6 wholesalers. Wholesalers are also prohibited from purchasing  
7 annually in excess of fifteen percent (15%) of their inventory of  
8 any individual brand of spirits or wine from one or more  
9 wholesalers. The volume of spirits and wine and of each brand that  
10 each wholesaler is permitted to purchase annually from other  
11 wholesalers shall be calculated by the ABLE Commission by  
12 multiplying fifteen percent (15%) by:

- 13 a. the total volume of spirits sales of the wholesaler,  
14 by liter, from the previous calendar year, and
- 15 b. the total volume of wine sales of the wholesaler, by  
16 liter, from the previous calendar year, and
- 17 c. the volume of sales of each brand of spirits or wine  
18 of the wholesaler, by liter, from the previous  
19 calendar year.

20 A wholesaler who did not post any sales of spirits, wine or of a  
21 particular brand in the previous calendar year shall be deemed to  
22 have sold the same volume of spirits, wine or of a particular brand  
23 as the wholesaler posting the smallest volumes of sales in spirits,  
24 wine or of a particular brand for that year for the purposes of this

1 paragraph. Notwithstanding the foregoing, wholesalers shall not  
2 purchase any inventory in spirits or wine from any other wholesaler  
3 until such time that the purchasing wholesaler possesses an  
4 inventory valued at no less than Two Hundred Fifty Thousand Dollars  
5 (\$250,000.00). Inventory valuation shall be based on the original  
6 actual price paid by the purchasing wholesaler to the nonresident  
7 seller for ~~said~~ the inventory.

8 3. A wholesaler may sell spirits and wine to other wholesalers  
9 or purchase spirits and wines from other wholesalers without  
10 complying with paragraph 2 of this subsection in the case of the  
11 sale, purchase, or other transfer or acquisition of the entire  
12 business of a wholesaler, including the inventory of spirits and  
13 wine.

14 4. A wholesaler license shall authorize the holder thereof to  
15 operate a single bonded warehouse with a single central office  
16 together with delivery facilities at a location in this state only  
17 at the principal place of business for which the wholesaler license  
18 was granted.

19 5. All licensed wholesalers shall register prices, purchase and  
20 keep on hand or have on order a fifteen-day supply of all brands  
21 constituting the top eighteen brands in total sales by all Oklahoma  
22 wholesalers during the past twelve-month period, according to the  
23 records of the ABLE Commission as revised by the ABLE Commission  
24 quarterly; provided, however, that not more than three brands of any

1 particular nonresident seller shall be included in the top-brands  
2 classification. All purchase orders for these top eighteen brands  
3 must show an expected due delivery date. These purchase orders may  
4 only be canceled with prior approval of the Director of the ABLE  
5 Commission, unless a wholesaler shall have in its warehouse a  
6 fifteen-day supply of merchandise on such purchase order.

7 In order to allow the ABLE Commission to determine the top  
8 eighteen brands, wholesalers must submit to the ABLE Commission  
9 every sixty (60) days a sworn affidavit listing their top twenty-  
10 five brands in sales for the previous sixty (60) days, excluding  
11 sales to wholesalers. Such affidavits shall be submitted in  
12 conjunction with the original price postings of wholesalers.

13 A fifteen-day supply of a particular brand for a particular  
14 wholesaler shall be based upon the market share of the wholesaler,  
15 determined by first multiplying the total number of liters of such  
16 brand sold by all wholesalers to all retailers during the previous  
17 calendar year by the percentage that the total sales of wine and  
18 spirits of the particular wholesaler, in liters, for such calendar  
19 year bears to the total sales of wine and spirits, in liters,  
20 reported by all wholesalers for such calendar year; and then  
21 dividing by twenty-four (24); provided, that a fifteen-day supply  
22 for a wholesaler who has not been in business for the entirety of  
23 the previous calendar year shall be deemed to be equal to that of  
24 the wholesaler who was in business for the entirety of the previous

1 calendar year and who reported the lowest volume of sales of wine  
2 and spirits, in liters, of any wholesaler having been in business  
3 for such period.

4 G. A Class B wholesaler license shall authorize the holder  
5 thereof: To purchase and import into this state beer from persons  
6 authorized to sell same who are the holders of nonresident seller  
7 licenses, and their agents who are the holders of manufacturers  
8 agent licenses; to purchase beer from licensed brewers and Class B  
9 wholesalers in this state; to sell in retail containers to  
10 retailers, mixed beverage, caterer, special event, hotel beverage  
11 and airline/railroad beverage licensees in this state, beer which  
12 has been unloaded and stored at the holder's self-owned or leased  
13 and self-operated warehouse facilities for a period of at least  
14 twenty-four (24) hours before such sale; and to sell beer in this  
15 state to Class B wholesalers and out of this state to qualified  
16 persons, including federal instrumentalities and voluntary  
17 associations of military personnel on federal enclaves in this state  
18 over which this state has ceded jurisdiction.

19 H. A package store license shall authorize the holder thereof:  
20 To purchase alcohol, spirits, beer and wine in retail containers  
21 from the holder of a brewer, wholesaler or Class B wholesaler  
22 license and to purchase wine from a winemaker who is permitted and  
23 has elected to self-distribute as provided in Section 3 of Article  
24 XXVIII of the Oklahoma Constitution and to sell same on the licensed

1 premises in such containers to consumers for off-premises  
2 consumption only and not for resale; provided, wine may be sold to  
3 charitable organizations that are holders of charitable auction or  
4 charitable wine event licenses. All alcoholic beverages that are  
5 sold by a package store are to be sold at ordinary room temperature.

6 I. A mixed beverage license shall authorize the holder thereof:  
7 To purchase alcohol, spirits, beer or wine in retail containers from  
8 the holder of a wholesaler or Class B wholesaler license or as  
9 specifically provided by law and to sell, offer for sale and possess  
10 mixed beverages for on-premises consumption only; provided, the  
11 holder of a mixed beverage license issued for an establishment which  
12 is also a restaurant may purchase wine directly from a winemaker who  
13 is permitted and has elected to self-distribute as provided in  
14 Section 3 of Article XXVIII of the Oklahoma Constitution.

15 Sales and service of mixed beverages by holders of mixed  
16 beverage licenses shall be limited to the licensed premises of the  
17 licensee unless the holder of the mixed beverage license also  
18 obtains a caterer license or a mixed beverage/caterer combination  
19 license. A mixed beverage license shall only be issued in counties  
20 of this state where the sale of alcoholic beverages by the  
21 individual drink for on-premises consumption has been authorized. A  
22 separate license shall be required for each place of business. No  
23 mixed beverage license shall be issued for any place of business

24

1 functioning as a motion picture theater, as defined by Section 506  
2 of this title.

3 J. A bottle club license shall authorize the holder thereof:  
4 To store, possess and mix alcoholic beverages belonging to members  
5 of the club and to serve such alcoholic beverages for on-premises  
6 consumption to club members. A bottle club license shall only be  
7 issued in counties of this state where the sale of alcoholic  
8 beverages by the individual drink for on-premises consumption has  
9 not been authorized. A separate license shall be required for each  
10 place of business.

11 K. A caterer license shall authorize the holder thereof: To  
12 sell mixed beverages for on-premises consumption incidental to the  
13 sale or distribution of food at particular functions, occasions, or  
14 events which are temporary in nature. A caterer license shall not  
15 be issued in lieu of a mixed beverage license. A caterer license  
16 shall only be issued in counties of this state where the sale of  
17 alcoholic beverages by the individual drink for on-premises  
18 consumption has been authorized. A separate license shall be  
19 required for each place of business.

20 L. 1. An annual special event license shall authorize the  
21 holder thereof: To sell and distribute mixed beverages for  
22 consumption on the premises for which the license has been issued  
23 for up to four events to be held over a period not to exceed one (1)  
24 year, not to exceed two such events in any three-month period. For

1 purposes of this paragraph, an event shall not exceed a period of  
2 ten (10) consecutive days. An annual special event license shall  
3 only be issued in counties of this state where the sale of alcoholic  
4 beverages by the individual drink for on-premises consumption has  
5 been authorized. The holder of an annual special event license  
6 shall provide written notice to the ABLE Commission of each special  
7 event not less than ten (10) days before the event is held.

8       2. A quarterly special event license shall authorize the holder  
9 thereof: To sell and distribute mixed beverages for consumption on  
10 the premises for which the license has been issued for up to three  
11 events to be held over a period not to exceed three (3) months. For  
12 purposes of this paragraph, an event shall not exceed a period of  
13 ten (10) consecutive days. A quarterly special event license shall  
14 only be issued in counties of this state where the sale of alcoholic  
15 beverages by the individual drink for on-premises consumption has  
16 been authorized. The holder of a quarterly special event license  
17 shall provide written notice to the ABLE Commission of each special  
18 event not less than ten (10) days before the event is held.

19       M. A hotel beverage license shall authorize the holder thereof:  
20 To sell or serve alcoholic beverages in 50 milliliter spirits, 187  
21 milliliter wine, and 12-ounce malt beverage containers which are  
22 distributed from a hotel room mini-bar. A hotel beverage license  
23 shall only be issued in counties of this state where the sale of  
24 alcoholic beverages by the individual drink for on-premises

1 consumption has been authorized. A hotel beverage license shall  
2 only be issued to a hotel or motel as defined by Section 506 of this  
3 title which is also the holder of a mixed beverage license.  
4 Provided, that application may be made simultaneously for both such  
5 licenses. A separate license shall be required for each place of  
6 business.

7 N. An airline/railroad beverage license shall authorize the  
8 holder thereof: To sell or serve alcoholic beverages in or from any  
9 size container on a commercial passenger airplane or railroad  
10 operated in compliance with a valid license, permit or certificate  
11 issued under the authority of the United States or this state, even  
12 though the airplane or train, in the course of its travel, may cross  
13 an area in which the sale of alcoholic beverages by the individual  
14 drink is not authorized and to store alcoholic beverages in sealed  
15 containers of any size at any airport or station regularly served by  
16 the licensee, in accordance with rules promulgated by the Alcoholic  
17 Beverage Laws Enforcement Commission. Alcoholic beverages purchased  
18 by the holder of an airline/railroad license from the holder of a  
19 wholesaler license shall be presumed to be purchased for consumption  
20 outside the State of Oklahoma or in interstate commerce, and shall  
21 be exempt from the excise tax provided for in Section 553 of this  
22 title.

23 O. An agent license shall authorize the holder thereof: To  
24 represent only the holders of licenses within this state, other than

1 retailers, authorized to sell alcoholic beverages to retail dealers  
2 in Oklahoma, and to solicit and to take orders for the purchase of  
3 alcoholic beverages from retailers including licensees authorized to  
4 sell alcoholic beverages by the individual drink for on-premises  
5 consumption. Such license shall be issued only to agents and  
6 employees of the holder of a license under the Oklahoma Alcoholic  
7 Beverage Control Act, ~~Section 502 et seq. of this title~~ but no such  
8 license shall be required of an employee making sales of alcoholic  
9 beverages on licensed premises of the employee's principal. No  
10 person holding an agent license shall be entitled to a manufacturers  
11 agent license.

12 P. An employee license shall authorize the holder thereof: To  
13 work in a package store, mixed beverage establishment, bottle club,  
14 or any establishment where alcohol or alcoholic beverages are sold,  
15 mixed, or served. Persons employed by a mixed beverage licensee or  
16 a bottle club who do not participate in the service, mixing, or sale  
17 of mixed beverages shall not be required to have an employee  
18 license. Provided, however, that a manager employed by a mixed  
19 beverage licensee or a bottle club shall be required to have an  
20 employee license whether or not the manager participates in the  
21 service, mixing or sale of mixed beverages. Applicants for an  
22 employee license must have a health card issued by the county in  
23 which they are employed, if the county issues such a card.  
24 Employees of special event, caterer or airline/railroad beverage

1 licensees shall not be required to obtain an employee license.  
2 Persons employed by a hotel licensee who participate in the stocking  
3 of hotel room mini-bars or in the handling of alcoholic beverages to  
4 be placed in such devices shall be required to have an employee  
5 license.

6 Q. An industrial license may be issued to persons desiring to  
7 import, transport, and use alcohol for the following purposes:

8 1. Manufacture of patent, proprietary, medicinal,  
9 pharmaceutical, antiseptic, and toilet preparations;

10 2. Manufacture of extracts, syrups, condiments, and food  
11 products; and

12 3. For use in scientific, chemical, mechanical, industrial, and  
13 medicinal products and purposes.

14 No other provisions of the Oklahoma Alcoholic Beverage Control  
15 Act shall apply to alcohol intended for industrial, medical,  
16 mechanical, or scientific use.

17 Any person receiving alcohol under authority of an industrial  
18 license who shall use, permit, or cause same to be used for purposes  
19 other than authorized purposes specified above, and all such  
20 alcohol, shall be liable to all provisions of the Oklahoma Alcoholic  
21 Beverage Control Act, including payment of tax thereon.

22 No provisions of the Oklahoma Alcoholic Beverage Control Act  
23 shall apply to alcohol withdrawn by any person free of federal tax  
24 under a tax-free permit issued by the United States government, if

1 such alcohol is received, stored, and used as authorized by federal  
2 laws.

3 R. A carrier license may be issued to any common carrier  
4 operating under a certificate of convenience and necessity issued by  
5 any duly authorized federal or state regulatory agency. Such  
6 license shall authorize the holder thereof to transport alcoholic  
7 beverages other than wine sold directly by a winemaker or winery to  
8 a retail package store or restaurant into, within, and out of this  
9 state under such terms, conditions, limitations, and restrictions as  
10 the ABLE Commission may prescribe by order issuing such license and  
11 by regulations.

12 S. A private carrier license may be issued to any carrier other  
13 than a common carrier described in subsection Q of this section.  
14 Such license shall authorize the holder thereof to transport  
15 alcoholic beverages other than wine sold directly by a winemaker or  
16 winery to a retail package store or restaurant into, within, or out  
17 of this state under such terms, conditions, limitations, and  
18 restrictions as the ABLE Commission may prescribe by order issuing  
19 such license and by regulations. No carrier license or private  
20 carrier license shall be required of licensed brewers, distillers,  
21 winemakers, rectifiers, wholesalers, or Class B wholesalers, to  
22 transport alcoholic beverages from the place of purchase or  
23 acquisition to the licensed premises of such licensees and from such  
24 licensed premises to the licensed premises of the purchaser in

1 vehicles owned or leased by such licensee when such transportation  
2 is for a lawful purpose and not for hire.

3 No carrier license or private carrier license shall be required  
4 of the holder of a package store, mixed beverage, caterer, special  
5 event, hotel beverage or airline/railroad license to pick up  
6 alcoholic beverage orders from the licensees' wholesaler or Class B  
7 wholesaler from whom they are purchased, and to transport such  
8 alcoholic beverages from the place of purchase or acquisition to the  
9 licensed premise of such licensees in vehicles owned or under the  
10 control of such licensee or a licensed employee of such licensee  
11 under such terms, conditions, limitations and restrictions as the  
12 ABLE Commission may prescribe.

13 T. A bonded warehouse license shall authorize the holder  
14 thereof: To receive and store alcoholic beverages for the holders  
15 of storage licenses on the licensed premises of the bonded warehouse  
16 licensee. No goods, wares or merchandise other than alcoholic  
17 beverages may be stored in the same bonded warehouse with alcoholic  
18 beverages. The holder of a bonded warehouse license shall furnish  
19 and file with the ABLE Commission a bond running to all bailers of  
20 alcoholic beverages under proper storage licenses and their  
21 assignees (including mortgagees or other bona fide lienholders)  
22 conditioned upon faithful performance of the terms and conditions of  
23 such bailments.

24

1 U. A storage license may be issued to a holder of a brewer,  
2 distiller, winemaker, rectifier, wholesaler, Class B wholesaler,  
3 nonresident seller, package store, mixed beverage, caterer, or hotel  
4 beverage license, and shall authorize the holder thereof: To store  
5 alcoholic beverages in a public warehouse holding a bonded warehouse  
6 license, and no goods, wares or merchandise other than alcoholic  
7 beverages may be stored in the same warehouse with alcoholic  
8 beverages in private warehouses owned or leased and operated by such  
9 licensees elsewhere than on their licensed premises. Provided:

10 1. A storage license issued to a Class B wholesaler shall  
11 permit the storage of light beer and permit the sale and delivery to  
12 retailers from the premises covered by such license;

13 2. Any licensee who is the holder of a mixed beverage/caterer  
14 combination license or the holder of a mixed beverage license and a  
15 hotel beverage license who is issued a storage license shall store  
16 all inventories of alcoholic beverages either on the premises of the  
17 mixed beverage establishment or in the warehouse;

18 3. A storage license shall not be required for a special event  
19 licensee storing alcoholic beverages for use at a subsequent event;  
20 and

21 4. Notwithstanding the provisions of subsection # I of this  
22 section or any other provision of this title, a licensee who wholly  
23 owns more than one licensed mixed beverage establishment may store  
24 alcoholic beverages for each of the licensed establishments in one

1 location under one storage license. Alcoholic beverages purchased  
2 and stored pursuant to the provisions of a storage license, for one  
3 licensed mixed beverage establishment may be transferred by a  
4 licensee to another licensed mixed beverage establishment which is  
5 wholly owned by the same licensee. Notice of such a transfer shall  
6 be given in writing to the Oklahoma Tax Commission and the ABLE  
7 Commission within three (3) business days of the transfer. The  
8 notice shall clearly show the quantity, brand and size of every  
9 transferred bottle or case.

10 V. A sacramental wine supplier license shall authorize the  
11 holder thereof: To sell, ship or deliver sacramental wine to any  
12 religious corporation or society of this state holding a valid  
13 exemption from taxation issued pursuant to Section 501(a) of the  
14 Internal Revenue Code, 1986, and listed as an exempt organization in  
15 Section 501(c) (3) of the Internal Revenue Code, 1986, of the United  
16 States, as amended.

17 W. A beer and wine license shall authorize the holder thereof:  
18 To purchase beer and wine in retail containers from the holder of a  
19 wholesaler or Class B wholesaler license or as specifically provided  
20 by law and to sell, offer for sale and possess beer and wine for on-  
21 premises consumption only; provided, the holder of a beer and wine  
22 license issued for an establishment which is also a restaurant may  
23 purchase wine from a winemaker who is permitted and has elected to  
24

1 self-distribute as provided in Section 3 of Article XXVIII of the  
2 Oklahoma Constitution.

3 Sales and service of beer and wine by holders of beer and wine  
4 licenses shall be limited to the licensed premises of the licensee  
5 unless the holder of the beer and wine license also obtains a  
6 caterer license. A beer and wine license shall only be issued in  
7 counties of this state where the sale of alcoholic beverages by the  
8 individual drink for on-premises consumption has been authorized. A  
9 separate license shall be required for each place of business. No  
10 beer and wine license shall be issued for any place of business  
11 functioning as a motion picture theater, as defined by Section 506  
12 of this title. No spirits shall be stored, possessed or consumed on  
13 the licensed premises of a beer and wine licensee.

14 X. A charitable auction, charitable wine event or charitable  
15 beer event license may be issued to a charitable organization exempt  
16 from taxation under Section 501(c)(3), (4), (5), (7), (8), (9),  
17 (10), or (19) of the United States Internal Revenue Code. The  
18 charitable wine event license or charitable beer event license shall  
19 authorize the holder thereof to conduct a wine or beer event which  
20 may consist of one or more of a wine or beer tasting event, a wine  
21 or beer dinner event or a wine or beer auction, which may be either  
22 a live auction conducted by an auctioneer or a silent auction for  
23 which:

24

1 1. Bid sheets are accepted from interested bidders at the  
2 event;

3 2. The holders of tickets are allowed to bid online for a  
4 period not exceeding thirty (30) days prior to the event; or

5 3. Both bid sheets are accepted at the event and online bids  
6 are accepted pursuant to paragraph 2 of this subsection.

7 A charitable wine or charitable beer event shall be conducted  
8 solely to raise funds for charitable purposes. Wine or beer used  
9 in, served, or consumed at a charitable wine or beer event may be  
10 purchased by the charitable organization or donated by any person or  
11 entity. The charitable wine event license or charitable beer event  
12 license shall be issued for a period not exceeding four (4) days.  
13 Only one such license may be issued to an organization in any  
14 twelve-month period. The charitable organization holding a  
15 charitable wine event license or charitable beer event license shall  
16 not be required to obtain a special event license. The charitable  
17 auction license shall authorize the holder thereof to auction wine  
18 purchased from a retail package store or received as a gift from an  
19 individual if the auction is conducted to raise funds for charitable  
20 purposes. The charitable auction license shall be issued for a  
21 period not to exceed two (2) days. Only one such license shall be  
22 issued to an organization in any twelve-month period. The maximum  
23 amount of wine auctioned pursuant to the charitable auction license  
24 shall not exceed fifty (50) gallons. All wines auctioned pursuant

1 to the charitable auction license shall be registered and all fees  
2 and taxes shall be paid in accordance with the Oklahoma Alcoholic  
3 Beverage Control Act.

4 Y. A mixed beverage/caterer combination license shall authorize  
5 the holder thereof: To purchase or sell mixed beverages as  
6 specifically provided by law for the holder of a mixed beverage  
7 license or a caterer license. All provisions of the Oklahoma  
8 Alcoholic Beverage Control Act applicable to mixed beverage licenses  
9 or caterer licenses, or the holders thereof, shall also be  
10 applicable to mixed beverage/caterer combination licenses or the  
11 holders thereof, except where specifically otherwise provided. A  
12 mixed beverage/caterer combination license shall only be issued in  
13 counties of this state where the sale of alcoholic beverages by the  
14 individual drink for on-premises consumption has been authorized. A  
15 separate license shall be required for each place of business.

16 Z. In the event any portion of this section is declared invalid  
17 for any reason, the invalid portion shall be severed and the rest  
18 and remainder of the section shall be saved and given full force and  
19 application.

20 AA. Except as provided in Sections 554.1 and 554.2 of this  
21 title with respect to cities, towns and counties, and except as may  
22 be provided under Title 68 with respect to the Oklahoma Tax  
23 Commission, no license or permit other than licenses as provided  
24 under the Oklahoma Alcoholic Beverage Control Act shall be required

1 of any licensee by any agency, instrumentality or political  
2 subdivision of this state to engage in any activity covered by the  
3 Oklahoma Alcoholic Beverage Control Act anywhere within the State of  
4 Oklahoma and no agency, instrumentality or political subdivision of  
5 this state shall interfere with the ABLE Commission's regulation of,  
6 or a wholesaler's performance of, the sale, distribution,  
7 possession, handling or marketing of alcoholic beverages on any  
8 premises of any licensee as defined in Section 506 of this title.

9 SECTION 5. This act shall become effective July 1, 2012.

10 SECTION 6. It being immediately necessary for the preservation  
11 of the public peace, health and safety, an emergency is hereby  
12 declared to exist, by reason whereof this act shall take effect and  
13 be in full force from and after its passage and approval.

14 Passed the Senate the 13th day of March, 2012.

15

16

\_\_\_\_\_  
Presiding Officer of the Senate

17

18 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
19 2012.

20

21

\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

22

23

24