STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

HOUSE BILL 2954 By: McAffrey and Dorman

AS INTRODUCED

An Act relating to intoxicating liquors; amending 37 O.S. 2011, Section 521, which relates to licenses; allowing holders of brewer licenses to provide samples; allowing holders of package store licenses to provide samples; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 37 O.S. 2011, Section 521, is amended to read as follows:

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

B. A distiller license shall authorize the holder thereof: To manufacture, bottle, package, and store spirits on licensed premises; to sell spirits in this state to licensed wholesalers and

manufacturers only; to sell spirits out of this state to qualified persons; to purchase from licensed distillers and rectifiers in this state, and import spirits from without this state for manufacturing purposes in accordance with federal laws and regulations.

C. A winemaker license shall authorize the holder thereof: To manufacture (including such mixing, blending and cellar treatment as authorized by federal law), bottle, package, and store on licensed premises wine containing not more than twenty-four percent (24%) alcohol by volume, provided the bottle or package sizes authorized shall be limited to the capacities approved by the United States Alcohol and Tobacco Tax and Trade Bureau; to sell wine in this state to licensed wholesalers and manufacturers; to sell bottles of wine produced at the winery from grapes and other fruits and berries grown in this state, if available, to consumers on the premises of the winery; to serve visitors on the licensed premises samples of wine produced on the premises; to serve samples of wine produced at the winery at festivals and trade shows; to sell wine produced at the winery, in original sealed containers, at festivals and trade shows; to sell wine out of this state to qualified persons; to purchase from licensed winemakers, distillers and rectifiers in this state, and to import into this state wine, brandy and fruit spirits for use in manufacturing in accordance with federal laws and regulations; provided, a winemaker either within or without this state that annually produces no more than ten thousand (10,000)

gallons of wine may elect to sell and self-distribute the wine produced by such winemaker directly to licensed retail package stores and restaurants in this state; and provided further that:

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

b. if a winemaker or winery sells directly to a retail package store or restaurant, the winemaker shall transport the wine from the winemaker's winery to the premises where the wine is to be delivered only in vehicles owned or leased by the winemaker and not by common or private contract carrier and shall obtain all necessary permits as required by the Oklahoma Alcoholic Beverage Control Act, and

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

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

E. A rectifier license shall authorize the holder thereof: To rectify spirits and wines, bottle, package, and store same on the licensed premises; to sell spirits and wines in this state to licensed wholesalers and manufacturers only; to sell spirits and wines out of this state to qualified persons; to purchase from licensed manufacturers in this state; and to import into this state for manufacturing purposes spirits and wines in accordance with federal laws and regulations.

F. 1. A wholesaler license shall authorize the holder thereof: To purchase and import into this state spirits and wines from persons authorized to sell same who are the holders of a nonresident seller license, and their agents who are the holders of manufacturers agent licenses; to purchase spirits and wines from

licensed distillers, rectifiers and winemakers in this state; to purchase spirits and wines from licensed wholesalers, to the extent set forth in paragraphs 2 and 3 of this subsection; to sell in retail containers in this state to retailers, mixed beverage, caterer, special event, hotel beverage or airline/railroad beverage licensees, spirits and wines which have been received and unloaded at the bonded warehouse facilities of the wholesaler before such sale; to sell to licensed wholesalers, to the extent set forth in paragraphs 2 and 3 of this subsection, spirits and wines which have been received and unloaded at the bonded warehouse facilities of the wholesaler before such sale; and to sell spirits and wines out of this state to qualified persons. Provided, however, sales of spirits and wine in containers with a capacity of less than one-twentieth (1/20) gallon by a holder of a wholesaler license shall be in full case lots and in the original unbroken case. Wholesalers shall be authorized to place such signs outside their place of business as are required by Acts of Congress and by such laws and regulations promulgated under such Acts.

2. Wholesalers are prohibited from purchasing annually in excess of fifteen percent (15%) of their total spirits inventory and fifteen percent (15%) of their total wine inventory from one or more wholesalers. Wholesalers are also prohibited from purchasing annually in excess of fifteen percent (15%) of their inventory of any individual brand of spirits or wine from one or more

wholesalers. The volume of spirits and wine and of each brand that each wholesaler is permitted to purchase annually from other wholesalers shall be calculated by the ABLE Commission by multiplying fifteen percent (15%) by:

a. the total volume of spirits sales of the wholesaler, by liter, from the previous calendar year, and

b. the total volume of wine sales of the wholesaler, by liter, from the previous calendar year, and

c. the volume of sales of each brand of spirits or wine of the wholesaler, by liter, from the previous calendar year.

A wholesaler who did not post any sales of spirits, wine or of a particular brand in the previous calendar year shall be deemed to have sold the same volume of spirits, wine or of a particular brand as the wholesaler posting the smallest volumes of sales in spirits, wine or of a particular brand for that year for the purposes of this paragraph. Notwithstanding the foregoing, wholesalers shall not purchase any inventory in spirits or wine from any other wholesaler until such time that the purchasing wholesaler possesses an inventory valued at no less than Two Hundred Fifty Thousand Dollars ($250,000.00). Inventory valuation shall be based on the original actual price paid by the purchasing wholesaler to the nonresident seller for said inventory.

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

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

5. All licensed wholesalers shall register prices, purchase and keep on hand or have on order a fifteen-day supply of all brands constituting the top eighteen brands in total sales by all Oklahoma wholesalers during the past twelve-month period, according to the records of the ABLE Commission as revised by the ABLE Commission quarterly; provided, however, that not more than three brands of any particular nonresident seller shall be included in the top-brands classification. All purchase orders for these top eighteen brands must show an expected due delivery date. These purchase orders may only be canceled with prior approval of the Director of the ABLE Commission, unless a wholesaler shall have in its warehouse a fifteen-day supply of merchandise on such purchase order.

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

A fifteen-day supply of a particular brand for a particular wholesaler shall be based upon the market share of the wholesaler, determined by first multiplying the total number of liters of such brand sold by all wholesalers to all retailers during the previous calendar year by the percentage that the total sales of wine and spirits of the particular wholesaler, in liters, for such calendar year bears to the total sales of wine and spirits, in liters, reported by all wholesalers for such calendar year; and then dividing by twenty-four (24); provided, that a fifteen-day supply for a wholesaler who has not been in business for the entirety of the previous calendar year shall be deemed to be equal to that of the wholesaler who was in business for the entirety of the previous calendar year and who reported the lowest volume of sales of wine and spirits, in liters, of any wholesaler having been in business for such period.

G. A Class B wholesaler license shall authorize the holder thereof: To purchase and import into this state beer from persons authorized to sell same who are the holders of nonresident seller

licenses, and their agents who are the holders of manufacturers agent licenses; to purchase beer from licensed brewers and Class B wholesalers in this state; to sell in retail containers to retailers, mixed beverage, caterer, special event, hotel beverage and airline/railroad beverage licensees in this state, beer which has been unloaded and stored at the holder's self-owned or leased and self-operated warehouse facilities for a period of at least twenty-four (24) hours before such sale; and to sell beer in this state to Class B wholesalers and out of this state to qualified persons, including federal instrumentalities and voluntary associations of military personnel on federal enclaves in this state over which this state has ceded jurisdiction.

H. A package store license shall authorize the holder thereof: To purchase alcohol, spirits, beer and wine in retail containers from the holder of a brewer, wholesaler or Class B wholesaler license and to purchase wine from a winemaker who is permitted and has elected to self-distribute as provided in Section 3 of Article XXVIII of the Oklahoma Constitution and to sell same on the licensed premises in such containers to consumers for off-premises consumption only and not for resale; ~~provided~~ <u>to serve visitors on the licensed premises samples of intoxicating beverages offered for sale by the licensee on the premises. Provided</u>, wine may be sold to charitable organizations that are holders of charitable auction or

charitable wine event licenses. All alcoholic beverages that are sold by a package store are to be sold at ordinary room temperature.

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

Sales and service of mixed beverages by holders of mixed beverage licenses shall be limited to the licensed premises of the licensee unless the holder of the mixed beverage license also obtains a caterer license or a mixed beverage/caterer combination license. A mixed beverage license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A separate license shall be required for each place of business. No mixed beverage license shall be issued for any place of business functioning as a motion picture theater, as defined by Section 506 of this title.

J. A bottle club license shall authorize the holder thereof: To store, possess and mix alcoholic beverages belonging to members

of the club and to serve such alcoholic beverages for on-premises consumption to club members. A bottle club license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has not been authorized. A separate license shall be required for each place of business.

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

L. 1. An annual special event license shall authorize the holder thereof: To sell and distribute mixed beverages for consumption on the premises for which the license has been issued for up to four events to be held over a period not to exceed one (1) year, not to exceed two such events in any three-month period. For purposes of this paragraph, an event shall not exceed a period of ten (10) consecutive days. An annual special event license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has

been authorized. The holder of an annual special event license shall provide written notice to the ABLE Commission of each special event not less than ten (10) days before the event is held.

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

M. A hotel beverage license shall authorize the holder thereof: To sell or serve alcoholic beverages in 50 milliliter spirits, 187 milliliter wine, and 12-ounce malt beverage containers which are distributed from a hotel room mini-bar. A hotel beverage license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A hotel beverage license shall only be issued to a hotel or motel as defined by Section 506 of this title which is also the holder of a mixed beverage license. Provided, that application may be made simultaneously for both such

licenses. A separate license shall be required for each place of business.

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

O. An agent license shall authorize the holder thereof: To represent only the holders of licenses within this state, other than retailers, authorized to sell alcoholic beverages to retail dealers in Oklahoma, and to solicit and to take orders for the purchase of alcoholic beverages from retailers including licensees authorized to sell alcoholic beverages by the individual drink for on-premises

consumption. Such license shall be issued only to agents and employees of the holder of a license under the Oklahoma Alcoholic Beverage Control Act, Section 502 et seq. of this title but no such license shall be required of an employee making sales of alcoholic beverages on licensed premises of the employee's principal. No person holding an agent license shall be entitled to a manufacturers agent license.

P. An employee license shall authorize the holder thereof: To work in a package store, mixed beverage establishment, bottle club, or any establishment where alcohol or alcoholic beverages are sold, mixed, or served. Persons employed by a mixed beverage licensee or a bottle club who do not participate in the service, mixing, or sale of mixed beverages shall not be required to have an employee license. Provided, however, that a manager employed by a mixed beverage licensee or a bottle club shall be required to have an employee license whether or not the manager participates in the service, mixing or sale of mixed beverages. Applicants for an employee license must have a health card issued by the county in which they are employed, if the county issues such a card. Employees of special event, caterer or airline/railroad beverage licensees shall not be required to obtain an employee license. Persons employed by a hotel licensee who participate in the stocking of hotel room mini-bars or in the handling of alcoholic beverages to

be placed in such devices shall be required to have an employee license.

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

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

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

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

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

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

No provisions of the Oklahoma Alcoholic Beverage Control Act shall apply to alcohol withdrawn by any person free of federal tax under a tax-free permit issued by the United States government, if such alcohol is received, stored, and used as authorized by federal laws.

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

S. A private carrier license may be issued to any carrier other than a common carrier described in subsection Q of this section. Such license shall authorize the holder thereof to transport alcoholic beverages other than wine sold directly by a winemaker or winery to a retail package store or restaurant into, within, or out of this state under such terms, conditions, limitations, and restrictions as the ABLE Commission may prescribe by order issuing such license and by regulations. No carrier license or private carrier license shall be required of licensed brewers, distillers, winemakers, rectifiers, wholesalers, or Class B wholesalers, to transport alcoholic beverages from the place of purchase or acquisition to the licensed premises of such licensees and from such licensed premises to the licensed premises of the purchaser in vehicles owned or leased by such licensee when such transportation is for a lawful purpose and not for hire.

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

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

U. A storage license may be issued to a holder of a brewer, distiller, winemaker, rectifier, wholesaler, Class B wholesaler, nonresident seller, package store, mixed beverage, caterer, or hotel

beverage license, and shall authorize the holder thereof: To store alcoholic beverages in a public warehouse holding a bonded warehouse license, and no goods, wares or merchandise other than alcoholic beverages may be stored in the same warehouse with alcoholic beverages in private warehouses owned or leased and operated by such licensees elsewhere than on their licensed premises. Provided:

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

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

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

4. Notwithstanding the provisions of subsection H of this section or any other provision of this title, a licensee who wholly owns more than one licensed mixed beverage establishment may store alcoholic beverages for each of the licensed establishments in one location under one storage license. Alcoholic beverages purchased and stored pursuant to the provisions of a storage license, for one licensed mixed beverage establishment may be transferred by a

licensee to another licensed mixed beverage establishment which is wholly owned by the same licensee. Notice of such a transfer shall be given in writing to the Oklahoma Tax Commission and the ABLE Commission within three (3) business days of the transfer. The notice shall clearly show the quantity, brand and size of every transferred bottle or case.

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

W. A beer and wine license shall authorize the holder thereof: To purchase beer and wine in retail containers from the holder of a wholesaler or Class B wholesaler license or as specifically provided by law and to sell, offer for sale and possess beer and wine for on-premises consumption only; provided, the holder of a beer and wine license issued for an establishment which is also a restaurant may purchase wine from a winemaker who is permitted and has elected to self-distribute as provided in Section 3 of Article XXVIII of the Oklahoma Constitution.

Sales and service of beer and wine by holders of beer and wine licenses shall be limited to the licensed premises of the licensee

unless the holder of the beer and wine license also obtains a caterer license. A beer and wine license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A separate license shall be required for each place of business. No beer and wine license shall be issued for any place of business functioning as a motion picture theater, as defined by Section 506 of this title. No spirits shall be stored, possessed or consumed on the licensed premises of a beer and wine licensee.

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

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

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

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

A charitable wine or charitable beer event shall be conducted solely to raise funds for charitable purposes. Wine or beer used in, served, or consumed at a charitable wine or beer event may be purchased by the charitable organization or donated by any person or entity. The charitable wine event license or charitable beer event license shall be issued for a period not exceeding four (4) days. Only one such license may be issued to an organization in any twelve-month period. The charitable organization holding a charitable wine event license or charitable beer event license shall not be required to obtain a special event license. The charitable auction license shall authorize the holder thereof to auction wine purchased from a retail package store or received as a gift from an individual if the auction is conducted to raise funds for charitable purposes. The charitable auction license shall be issued for a period not to exceed two (2) days. Only one such license shall be issued to an organization in any twelve-month period. The maximum amount of wine auctioned pursuant to the charitable auction license shall not exceed fifty (50) gallons. All wines auctioned pursuant to the charitable auction license shall be registered and all fees and taxes shall be paid in accordance with the Oklahoma Alcoholic Beverage Control Act.

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

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

SECTION 2. This act shall become effective July 1, 2012.

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.

53-2-9208 CJB 01/19/12