

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1117

By: Bass

4  
5 AS INTRODUCED

6 An Act relating to intoxicating liquors; amending 37  
7 O.S. 2011, Section 537, which relates to the Oklahoma  
8 Alcoholic Beverage Control Act; providing for product  
9 tastings of certain alcoholic beverages by a package  
10 store licensee; providing for notice; requiring  
11 notice to be kept on file, provided to the ABLE  
12 Commission and available for inspection at certain  
13 place and time; permitting certain notice by  
14 facsimile, email or mail; providing for sample  
15 portions; prohibiting charge for sample serving;  
16 providing for sample servings; limiting certain  
17 servings; prohibiting the removal of samples from  
18 licensed premises; providing for removal of certain  
19 empty or open containers; prohibiting the sale of  
20 certain bottles; requiring certain invalidation for  
21 sale; limiting who can dispense certain alcoholic  
22 beverages at a tasting; requiring all samples be  
23 poured from retailer stock; prohibiting certain  
24 person from providing samples; requiring certain  
invoices be provided the ABLE Commission upon  
request; stating what shall be certain major  
administrative violations; providing for minor  
violations; and providing an effective date.

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

SECTION 1. AMENDATORY 37 O.S. 2011, Section 537, is  
amended to read as follows:

Section 537. A. No person shall:

- 1        1. Knowingly sell, deliver, or furnish alcoholic beverages to  
2 any person under twenty-one (21) years of age;
- 3        2. Sell, deliver or knowingly furnish alcoholic beverages to an  
4 intoxicated person or to any person who has been adjudged insane or  
5 mentally deficient;
- 6        3. Open a retail container or consume alcoholic beverages on  
7 the premises of a retail package store;
- 8        4. Import into this state, except as provided for in the  
9 Oklahoma Alcoholic Beverage Control Act, any alcoholic beverages;  
10 provided, that nothing herein shall prohibit the importation or  
11 possession for personal use of not more than one (1) liter of  
12 alcoholic beverages upon which the Oklahoma excise tax is  
13 delinquent;
- 14       5. Receive, possess, or use any alcoholic beverage in violation  
15 of the provisions of the Oklahoma Alcoholic Beverage Control Act;
- 16       6. Transport into, within, or through this state more than one  
17 (1) liter of alcoholic beverages upon which the Oklahoma excise tax  
18 has not been paid unless the person accompanying or in charge of the  
19 vehicle transporting same shall possess a true copy of a bill of  
20 lading, invoice, manifest or other document particularly identifying  
21 the alcoholic beverages being transported and showing the name and  
22 address of the consignor and consignee; provided, this prohibition  
23 shall not apply to the first one hundred eighty (180) liters of  
24 alcoholic beverages classified as household goods by military

1 personnel, age twenty-one (21) or older when entering Oklahoma from  
2 temporary active assignment outside the contiguous United States;

3 7. Knowingly transport in any vehicle upon a public highway,  
4 street or alley any alcoholic beverage except in the original  
5 container which shall not have been opened and the seal upon which  
6 shall not have been broken and from which the original cap or cork  
7 shall not have been removed, unless the opened container be in the  
8 rear trunk or rear compartment, which shall include the spare tire  
9 compartment in a vehicle commonly known as a station wagon and panel  
10 truck, or any outside compartment which is not accessible to the  
11 driver or any other person in the vehicle while it is in motion;

12 8. Drink intoxicating liquor in public, except on the premises  
13 of a licensee of the Alcoholic Beverage Laws Enforcement Commission  
14 who is authorized to sell or serve alcoholic beverages by the  
15 individual drink, or be intoxicated in a public place. This  
16 provision shall be cumulative and in addition to existing law;

17 9. Forcibly resist lawful arrest, or by physical contact  
18 interfere with an investigation of any infringement of the Oklahoma  
19 Alcoholic Beverage Control Act or with any lawful search or seizure  
20 being made by an inspector or agent of the ABLE Commission, when  
21 such person knows or should know that such acts are being performed  
22 by a state, county, or municipal officer, inspector or agent of the  
23 ABLE Commission;

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

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

7 12. Knowingly possess any bottle club membership card required  
8 to be issued by the ABLE Commission, which has been manufactured,  
9 counterfeited, imitated or in any way duplicated without the  
10 permission of the Commission.

11 B. No licensee of the ABLE Commission shall:

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

15 2. Employ any person under the age of twenty-one (21) in the  
16 selling or handling of alcoholic beverages. Provided, that a mixed  
17 beverage, beer and wine, caterer, special event or bottle club  
18 licensee may employ servers who are at least eighteen (18) years of  
19 age, except persons under twenty-one (21) years of age may not serve  
20 in designated bar or lounge areas, and a mixed beverage, beer and  
21 wine, caterer, special event or bottle club licensee may employ or  
22 hire musical bands who have musicians who are under twenty-one (21)  
23 years of age if each such musician is either accompanied by a parent  
24 or legal guardian or has on their person, to be made available for

1 inspection upon demand by any ABLE Commission officer or law  
2 enforcement officer, a written, notarized affidavit from the parent  
3 or legal guardian giving the underage musician permission to perform  
4 in designated bar or lounge areas;

5 3. Give any alcoholic beverage as a prize, premium or  
6 consideration for any lottery, game of chance or skill or any type  
7 of competition;

8 4. Advertise or offer "happy hours" or any other means or  
9 inducements to stimulate the consumption of alcoholic beverages  
10 including:

11 a. deliver more than two drinks to one person at one  
12 time,

13 b. sell or offer to sell to any person or group of  
14 persons any drinks at a price less than the price  
15 regularly charged for such drinks during the same  
16 calendar week, except at private functions not open to  
17 the public,

18 c. sell or offer to sell to any person an unlimited  
19 number of drinks during any set period of time for a  
20 fixed price, except at private functions not open to  
21 the public,

22 d. sell or offer to sell drinks to any person or group of  
23 persons on any one day at prices less than those  
24

1 charged the general public on that day, except at  
2 private functions not open to the public,

3 e. increase the volume of alcoholic beverages contained  
4 in a drink without increasing proportionately the  
5 price regularly charged for such drink during the same  
6 calendar week, or

7 f. encourage or permit, on the licensed premises, any  
8 game or contest which involves drinking or the  
9 awarding of drinks as prizes.

10 Provided that the provisions of this paragraph shall not prohibit  
11 the advertising or offering of food or entertainment in licensed  
12 establishments;

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

15 Provided, that this prohibition shall not be applicable to closed  
16 original containers of alcoholic beverages which are carried from  
17 the licensed premises of a bottle club by a patron, closed original  
18 wine containers removed from the premises of restaurants, hotels,  
19 and motels, or to closed original containers of alcoholic beverages  
20 transported to and from the place of business of a licensed caterer  
21 by the caterer or an employee of the caterer; or

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

24 C. No package store licensee shall:

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

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

7 a. conduct product tastings of distilled spirits, wine,  
8 beer and malt-based or spirit-based coolers on the  
9 licensed premises of the package store licensee during  
10 regular business hours, provided:

11 (1) a written notice of a product tasting shall be  
12 posted on the licensed premises of the package  
13 store licensee and provided to the ABLE  
14 Commission no later than four (4) days prior to  
15 the product tasting of wine event which clearly  
16 states:

17 (a) the type and brand of product to be tasted,

18 (b) the date and hours the product tasting is to  
19 take place, and

20 (c) the address of the premises where the  
21 product tasting is to occur,

22 (2) a copy of the notification shall be kept on file  
23 and be available for inspection on the premises  
24 during all product tasting hours. Notification

1 to the ABLE Commission may be made by facsimile,  
2 email or United States mail with postage prepaid,

3 (3) the sample portions at a product tasting shall be  
4 limited to no more than one (1) ounce for wine,  
5 beer and coolers, and one-half (1/2) ounce for  
6 distilled spirits,

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

9 (5) samples shall be limited to one serving per  
10 person for each product offered for sampling,  
11 provided that no more than five samples shall be  
12 served to the same person at any one product  
13 tasting. No samples shall be removed from the  
14 licensed premises,

15 (6) at the conclusion of a product tasting all empty  
16 or open bottles of product used in the product  
17 tasting shall be removed from the licensed  
18 premises. Any partially consumed bottle shall  
19 not be offered for sale. Each opened bottle  
20 shall be invalidated for sale by writing the word  
21 "sample" on the label of the bottle with  
22 indelible ink,

23 (7) no person other than the licensee or an agent or  
24 employee of the licensee shall dispense or

1 participate in the dispensing of product at a  
2 product tasting. All samples shall be poured  
3 from retailer stock. No samples shall be  
4 provided by any other licensee or person.  
5 Invoices for the product shall be provided to the  
6 ABLE Commission upon request, and

7 b. as provided by rule, it shall be a major  
8 administrative violation for any holder of a brewer,  
9 wholesaler or Class B wholesaler license to provide  
10 free product to a retailer for the purpose of a  
11 product tasting authorized by this paragraph. It  
12 shall be a major administrative violation for any  
13 retailer to accept free product from any person or  
14 holder of a brewer, wholesaler or Class B license for  
15 the purpose of offering a product tasting under this  
16 paragraph. Any other violation of this paragraph  
17 shall be considered a minor violation;

18 3. Sell, or keep package store premises open for the purpose of  
19 selling, any alcoholic beverages at any hour other than between the  
20 hours of 10:00 a.m. and 9:00 p.m. Monday through Saturday; provided,  
21 that no such sales shall be made, or package store premises be  
22 allowed to remain open for the purpose of making such sales, on New  
23 Year's Day, Memorial Day, the Fourth of July, Labor Day,  
24 Thanksgiving Day or Christmas Day. Package store licensees shall be

1 permitted to sell, or keep package store premises open for the  
2 purpose of selling, alcoholic beverages on the day of any General,  
3 Primary, Runoff Primary or Special Election whether on a national,  
4 state, county or city election, provided that the election day does  
5 not occur on any day on which such sales are otherwise prohibited by  
6 law;

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

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

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

21 b. "nationally recognized credit card" means any  
22 instrument or device, whether known as a credit card,  
23 credit plate, charge plate or by any other name,  
24 issued with or without fee by an issuer for the use of

1 the cardholder in obtaining money, goods, services or  
2 anything else of value on credit which is accepted by  
3 over one hundred merchants;

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

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

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

20 D. No wholesaler licensee shall:

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

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

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

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

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

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

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

23        5. Allow any person under twenty-one (21) years of age to enter  
24 into, remain within or loiter about the designated bar area of the

1 licensed premises, except for persons who incidentally pass through  
2 the designated area.

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

18 F. No bottle club licensee shall:

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

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

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

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

6           5. Sell any alcoholic beverage;

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

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

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

13           9. Allow any person under twenty-one (21) years of age to enter  
14 into, remain within or loiter about the designated bar area of the  
15 licensed premises, except for members of a musical band employed or  
16 hired as provided in paragraph 2 of subsection B of this section  
17 when the band is to perform within such area.

18           The prohibition in this subsection against persons under twenty-  
19 one (21) years of age entering or remaining within the designated  
20 bar area of the licensed premises shall not apply, if the licensed  
21 premises are closed to the public during a time the premises are  
22 legally permitted to be open for business and the premises are used  
23 for a private party at which alcoholic beverages may be served to  
24 persons twenty-one (21) years of age or older. Any alcoholic

1 beverages served at a private party on the licensed premises may be  
2 purchased from the licensee at a negotiated price or purchased  
3 privately and served at the private party on the licensed premises.  
4 Any licensee who desires to conduct such a private party shall  
5 notify the ABLE Commission, in writing, at least ten (10) calendar  
6 days prior to the private party. The notification shall include the  
7 date, time, and purpose of the private party and any other  
8 information the ABLE Commission may deem necessary.

9 G. No special event or caterer licensee shall:

10 1. Purchase or receive any alcoholic beverage other than from a  
11 person holding a wholesaler or Class B wholesaler license issued  
12 pursuant to the provisions of the Oklahoma Alcoholic Beverage  
13 Control Act; provided, a special event or caterer licensee may  
14 purchase wine produced at wineries in this state directly from an  
15 Oklahoma winemaker as provided in Section 3 of Article XXVIII of the  
16 Oklahoma Constitution; or

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

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

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

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