

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 861

By: Branan

4
5
6 AS INTRODUCED

7 An Act relating to mixed beverage licensees; amending
8 37 O.S. 2001, Section 537, as last amended by Section
9 4, Chapter 289, O.S.L. 2010 (37 O.S. Supp. 2010,
10 Section 537), which relates to prohibited acts;
11 modifying happy hour regulations; allowing certain
12 advertising between certain hours; deleting certain
13 regulations for drink pricing; providing an effective
14 date; and declaring an emergency.

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

16 SECTION 1. AMENDATORY 37 O.S. 2001, Section 537, as
17 last amended by Section 4, Chapter 289, O.S.L. 2010 (37 O.S. Supp.
18 2010, Section 537), is amended to read as follows:

19 Section 537. A. No person shall:

20 1. Knowingly sell, deliver, or furnish alcoholic beverages to
21 any person under twenty-one (21) years of age;

22 2. Sell, deliver or knowingly furnish alcoholic beverages to an
23 intoxicated person or to any person who has been adjudged insane or
24 mentally deficient;

3. Open a retail container or consume alcoholic beverages on
the premises of a retail package store;

1 4. Import into this state, except as provided for in the
2 Oklahoma Alcoholic Beverage Control Act, any alcoholic beverages;
3 provided, that nothing herein shall prohibit the importation or
4 possession for personal use of not more than one (1) liter of
5 alcoholic beverages upon which the Oklahoma excise tax is
6 delinquent;

7 5. Receive, possess, or use any alcoholic beverage in violation
8 of the provisions of the Oklahoma Alcoholic Beverage Control Act;

9 6. Transport into, within, or through this state more than one
10 (1) liter of alcoholic beverages upon which the Oklahoma excise tax
11 has not been paid unless the person accompanying or in charge of the
12 vehicle transporting same shall possess a true copy of a bill of
13 lading, invoice, manifest or other document particularly identifying
14 the alcoholic beverages being transported and showing the name and
15 address of the consignor and consignee; provided, this prohibition
16 shall not apply to the first one hundred eighty (180) liters of
17 alcoholic beverages classified as household goods by military
18 personnel, age twenty-one (21) or older when entering Oklahoma from
19 temporary active assignment outside the contiguous United States;

20 7. Knowingly transport in any vehicle upon a public highway,
21 street or alley any alcoholic beverage except in the original
22 container which shall not have been opened and the seal upon which
23 shall not have been broken and from which the original cap or cork
24 shall not have been removed, unless the opened container be in the

1 rear trunk or rear compartment, which shall include the spare tire
2 compartment in a vehicle commonly known as a station wagon and panel
3 truck, or any outside compartment which is not accessible to the
4 driver or any other person in the vehicle while it is in motion;

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

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

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

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

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

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

3 B. No licensee of the ABLE Commission shall:

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

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

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

24

1 4. Advertise or offer "happy hours", except between the hours
2 of 3:00 p.m. and 7:00 p.m. each day, or advertise any other means or
3 inducements to stimulate the consumption of alcoholic beverages
4 including:

5 a. deliver more than two drinks to one person at one
6 time,

7 ~~b. sell or offer to sell to any person or group of~~
8 ~~persons any drinks at a price less than the price~~
9 ~~regularly charged for such drinks during the same~~
10 ~~calendar week, except at private functions not open to~~
11 ~~the public,~~

12 ~~e.~~ sell or offer to sell to any person an unlimited
13 number of drinks during any set period of time for a
14 fixed price, except at private functions not open to
15 the public,

16 ~~d. sell or offer to sell drinks to any person or group of~~
17 ~~persons on any one day at prices less than those~~
18 ~~charged the general public on that day, except at~~
19 ~~private functions not open to the public,~~

20 ~~e.~~ increase the volume of alcoholic beverages contained
21 in a drink without increasing proportionately the
22 price regularly charged for such drink during the same
23 calendar week, or

24 ~~f.~~

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

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

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

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

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

18 C. No package store licensee shall:

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

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

1 3. Sell, or keep package store premises open for the purpose of
2 selling, any alcoholic beverages at any hour other than between the
3 hours of 10:00 a.m. and 9:00 p.m. Monday through Saturday; provided,
4 that no such sales shall be made, or package store premises be
5 allowed to remain open for the purpose of making such sales, on New
6 Year's Day, Memorial Day, the Fourth of July, Labor Day,
7 Thanksgiving Day or Christmas Day. Package store licensees shall be
8 permitted to sell, or keep package store premises open for the
9 purpose of selling, alcoholic beverages on the day of any General,
10 Primary, Runoff Primary or Special Election whether on a national,
11 state, county or city election, provided that the election day does
12 not occur on any day on which such sales are otherwise prohibited by
13 law;

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

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

22 a. "cash or debit card" means any instrument or device
23 whether known as a debit card or by any other name,
24 issued with or without fee by an issuer for the use of

1 the cardholder in depositing, obtaining or
2 transferring funds from a consumer banking electronic
3 facility, and

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

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

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

22 8. Pay for alcoholic beverages by a check or draft which is
23 dishonored by the drawee when presented to such drawee for payment;
24 and the ABLE Commission may cancel or suspend the license of any

1 retailer who has given a check or draft, as maker or endorser, which
2 is so dishonored upon presentation.

3 D. No wholesaler licensee shall:

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

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

9 E. No mixed beverage or beer and wine 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 Oklahoma Alcoholic Beverage Control Act; provided, a
13 mixed beverage or beer and wine licensee whose premises are a
14 restaurant may purchase wine produced at wineries in this state
15 directly from an Oklahoma winemaker as provided in Section 3 of
16 Article XXVIII of the Oklahoma Constitution;

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

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

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

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

23 F. No bottle club licensee shall:
24

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

24

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

16 G. No special event or caterer licensee shall:

17 1. Purchase or receive any alcoholic beverage other than from a
18 person holding a wholesaler or Class B wholesaler license issued
19 pursuant to the provisions of the Oklahoma Alcoholic Beverage
20 Control Act; provided, a special event or caterer licensee may
21 purchase wine produced at wineries in this state directly from an
22 Oklahoma winemaker as provided in Section 3 of Article XXVIII of the
23 Oklahoma Constitution; or

24

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

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

7 SECTION 2. This act shall become effective July 1, 2011.

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

12

13 53-1-1109 NP 1/20/2011 3:08:52 PM

14

15

16

17

18

19

20

21

22

23

24