

**SENATE CHAMBER**  
**STATE OF OKLAHOMA**

DISPOSITION

FLOOR AMENDMENT

No. \_\_\_\_\_

\_\_\_\_\_

COMMITTEE AMENDMENT

\_\_\_\_\_

(Date)

Mr./Madame President:

I move to amend Senate Bill No. SB1725, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

\_\_\_\_\_  
Senator Coleman

Coleman-NP-FS-Req#4023  
3/10/2020 1:30 PM

(Floor Amendments Only) Date and Time Filed: \_\_\_\_\_

Untimely

Amendment Cycle Extended

Secondary Amendment

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 FLOOR SUBSTITUTE  
4 FOR

5 SENATE BILL NO. SB1725

6 By: Coleman

7 FLOOR SUBSTITUTE

8 [ alcoholic beverages - business interests and acts  
9 prohibited for manufacturers - effective date ]

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

12 SECTION 1. AMENDATORY Section 3, Chapter 366, O.S.L.

13 2016, as last amended by Section 1, Chapter 322, O.S.L. 2019 (37A  
14 O.S. Supp. 2019, Section 1-103), is amended to read as follows:

15 Section 1-103. As used in the Oklahoma Alcoholic Beverage  
16 Control Act:

17 1. "ABLE Commission" or "Commission" means the Alcoholic  
18 Beverage Laws Enforcement Commission;

19 2. "Alcohol" means and includes hydrated oxide of ethyl, ethyl  
20 alcohol, ethanol or spirits of wine, from whatever source or by  
21 whatever process produced. It does not include wood alcohol or  
22 alcohol which has been denatured or produced as denatured in  
23 accordance with Acts of Congress and regulations promulgated  
24 thereunder;

1           3. "Alcoholic beverage" means alcohol, spirits, beer and wine  
2 as those terms are defined herein and also includes every liquid or  
3 solid, patented or not, containing alcohol, spirits, wine or beer  
4 and capable of being consumed as a beverage by human beings;

5           4. "Applicant" means any individual, legal or commercial  
6 business entity, or any individual involved in any legal or  
7 commercial business entity allowed to hold any license issued in  
8 accordance with the Oklahoma Alcoholic Beverage Control Act;

9           5. "Beer" means any beverage of alcohol by volume and obtained  
10 by the alcoholic fermentation of an infusion or decoction of barley,  
11 or other grain, malt or similar products. "Beer" may or may not  
12 contain hops or other vegetable products. "Beer" includes, among  
13 other things, beer, ale, stout, lager beer, porter and other malt or  
14 brewed liquors, but does not include sake, known as Japanese rice  
15 wine;

16           6. "Beer keg" means any brewer-sealed, single container that  
17 contains not less than four (4) gallons of beer;

18           7. "Beer distributor" means and includes any person licensed to  
19 distribute beer for retail sale in the state, but does not include a  
20 holder of a small brewer self-distribution license or brewpub self-  
21 distribution license. The term "distributor", as used in the  
22 Oklahoma Alcoholic Beverage Control Act, shall be construed to refer  
23 to a beer distributor;

24

1 8. "Bottle club" means any establishment in a county which has  
2 not authorized the retail sale of alcoholic beverages by the  
3 individual drink, which is required to be licensed to keep, mix and  
4 serve alcoholic beverages belonging to club members on club  
5 premises;

6 9. "Brand" means any word, name, group of letters, symbol or  
7 combination thereof, that is adopted and used by a licensed brewer  
8 to identify a specific beer and to distinguish that product from  
9 another beer;

10 10. "Brand extension" means:

11 a. after October 1, 2018, any brand of beer or cider  
12 introduced by a manufacturer in this state which  
13 either:

14 (1) incorporates all or a substantial part of the  
15 unique features of a preexisting brand of the  
16 same licensed brewer, or

17 (2) relies to a significant extent on the goodwill  
18 associated with the preexisting brand, or

19 b. any brand of beer that a brewer, the majority of whose  
20 total volume of all brands of beer distributed in this  
21 state by such brewer on January 1, 2016, was  
22 distributed as low-point beer, desires to sell,  
23 introduces, begins selling or theretofore has sold and  
24

1 desires to continue selling a strong beer in this  
2 state which either:

- 3 (1) incorporates or incorporated all or a substantial  
4 part of the unique features of a preexisting low-  
5 point beer brand of the same licensed brewer, or  
6 (2) relies or relied to a significant extent on the  
7 goodwill associated with a preexisting low-point  
8 beer brand;

9 11. "Brewer" means and includes any person who manufactures for  
10 human consumption by the use of raw materials or other ingredients  
11 any beer or cider upon which a license fee and a tax are imposed by  
12 any law of this state;

13 12. "Brewpub" means a licensed establishment operated on the  
14 premises of, or on premises located contiguous to, a small brewer,  
15 that prepares and serves food and beverages, including alcoholic  
16 beverages, for on-premises consumption;

17 13. "Cider" means any alcoholic beverage obtained by the  
18 alcoholic fermentation of fruit juice, including but not limited to  
19 flavored, sparkling or carbonated cider. For the purposes of the  
20 manufacture of this product, cider may be manufactured by either  
21 manufacturers or brewers. For the purposes of the distribution of  
22 this product, cider may be distributed by either wine and spirits  
23 wholesalers or beer distributors;

1 14. "Convenience store" means any person primarily engaged in  
2 retailing a limited range of general household items and groceries,  
3 with extended hours of operation, whether or not engaged in retail  
4 sales of automotive fuels in combination with such sales;

5 15. "Convicted" and "conviction" mean and include a finding of  
6 guilt resulting from a plea of guilty or nolo contendere, the  
7 decision of a court or magistrate or the verdict of a jury,  
8 irrespective of the pronouncement of judgment or the suspension  
9 thereof;

10 16. "Designated products" means the brands of wine or spirits  
11 offered for sale by a manufacturer that the manufacturer has  
12 assigned to a designated wholesaler for exclusive distribution;

13 17. "Designated wholesaler" means a wine and spirits wholesaler  
14 who has been selected by a manufacturer as a wholesaler appointed to  
15 distribute designated products;

16 18. "Director" means the Director of the ABLE Commission;

17 19. "Distiller" means any person who produces spirits from any  
18 source or substance, or any person who brews or makes mash, wort or  
19 wash, fit for distillation or for the production of spirits (except  
20 a person making or using such material in the authorized production  
21 of wine or beer, or the production of vinegar by fermentation), or  
22 any person who by any process separates alcoholic spirits from any  
23 fermented substance, or any person who, making or keeping mash, wort  
24 or wash, has also in his or her possession or use a still;

1       20. "Distributor agreement" means the written agreement between  
2 the distributor and brewer as set forth in Section 3-108 of this  
3 title;

4       21. "Drug store" means a person primarily engaged in retailing  
5 prescription and nonprescription drugs and medicines;

6       22. "Dual-strength beer" means a brand of beer that,  
7 immediately prior to April 15, 2017, was being sold and distributed  
8 in this state:

9           a. as a low-point beer pursuant to the Low-Point Beer  
10           Distribution Act in effect immediately prior to  
11           October 1, 2018, and

12           b. as strong beer pursuant to the Alcoholic Beverage  
13           Control Act in effect immediately prior to October 1,  
14           2018,

15 and continues to be sold and distributed as such on October 1, 2018.  
16 Dual-strength beer does not include a brand of beer that arose as a  
17 result of a brand extension as defined in this section;

18       23. "Fair market value" means the value in the subject  
19 territory covered by the written agreement with the distributor or  
20 wholesaler that would be determined in an arm's length transaction  
21 entered into without duress or threat of termination of the  
22 distributor's or wholesaler's rights and shall include all elements  
23 of value, including goodwill and going-concern value;

24       24. "Good cause" means:

- 1           a.    failure by the distributor to comply with the material  
2                    and reasonable provisions of a written agreement or  
3                    understanding with the brewer, or  
4           b.    failure by the distributor to comply with the duty of  
5                    good faith;

6           25.   "Good faith" means the duty of each party to any  
7 distributor agreement and all officers, employees or agents thereof  
8 to act with honesty in fact and within reasonable standards of fair  
9 dealing in the trade;

10          26.   "Grocery store" means a person primarily engaged in  
11 retailing a general line of food, such as canned or frozen foods,  
12 fresh fruits and vegetables, and fresh and prepared meats, fish and  
13 poultry;

14          27.   "Hotel" or "motel" means an establishment which is licensed  
15 to sell alcoholic beverages by the individual drink and which  
16 contains guestroom accommodations with respect to which the  
17 predominant relationship existing between the occupants thereof and  
18 the owner or operator of the establishment is that of innkeeper and  
19 guest. For purposes of this section, the existence of other legal  
20 relationships as between some occupants and the owner or operator  
21 thereof shall be immaterial;

22          28.   "Legal newspaper" means a newspaper meeting the requisites  
23 of a newspaper for publication of legal notices as prescribed in  
24 Sections 101 through 114 of Title 25 of the Oklahoma Statutes;



1       29. "Licensee" means any person holding a license under the  
2 Oklahoma Alcoholic Beverage Control Act, and any agent, servant or  
3 employee of such licensee while in the performance of any act or  
4 duty in connection with the licensed business or on the licensed  
5 premises;

6       30. "Low-point beer" shall mean any beverages containing more  
7 than one-half of one percent (1/2 of 1%) alcohol by volume, and not  
8 more than three and two-tenths percent (3.2%) alcohol by weight,  
9 including but not limited to, beer or cereal malt beverages obtained  
10 by the alcoholic fermentation of an infusion by barley or other  
11 grain, malt or similar products;

12       31. "Manufacturer" means a distiller, winemaker, rectifier or  
13 bottler of any alcoholic beverage, ~~other than beer~~ licensed by the  
14 State of Oklahoma, and its subsidiaries, affiliates and parent  
15 companies;

16       32. "Manufacturer's agent" means a salaried or commissioned  
17 salesperson who is the agent authorized to act on behalf of the  
18 manufacturer or nonresident seller in the state;

19       33. "Meals" means foods commonly ordered at lunch or dinner and  
20 at least part of which is cooked on the licensed premises and  
21 requires the use of dining implements for consumption. Provided,  
22 that the service of only food such as appetizers, sandwiches, salads  
23 or desserts shall not be considered "meals";

1 34. "Mini-bar" means a closed container, either refrigerated in  
2 whole or in part, or nonrefrigerated, and access to the interior of  
3 which is:

- 4 a. restricted by means of a locking device which requires
- 5 the use of a key, magnetic card or similar device, or
- 6 b. controlled at all times by the licensee;

7 35. "Mixed beverage cooler" means any beverage, by whatever  
8 name designated, consisting of an alcoholic beverage and fruit or  
9 vegetable juice, fruit or vegetable flavorings, dairy products or  
10 carbonated water containing more than one-half of one percent (1/2  
11 of 1%) of alcohol measured by volume but not more than seven percent  
12 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is  
13 packaged in a container not larger than three hundred seventy-five  
14 (375) milliliters. Such term shall include but not be limited to  
15 the beverage popularly known as a "wine cooler";

16 36. "Mixed beverages" means one or more servings of a beverage  
17 composed in whole or part of an alcoholic beverage in a sealed or  
18 unsealed container of any legal size for consumption on the premises  
19 where served or sold by the holder of a mixed beverage, beer and  
20 wine, caterer, public event, charitable event or special event  
21 license;

22 37. "Motion picture theater" means an establishment which is  
23 licensed by Section 2-110 of this title to sell alcoholic beverages  
24

1 by the individual drink and where motion pictures are exhibited, and  
2 to which the general public is admitted;

3 38. "Nondesignated products" means the brands of wine or  
4 spirits offered for sale by a manufacturer that have not been  
5 assigned to a designated wholesaler;

6 39. "Nonresident seller" means any person licensed pursuant to  
7 Section 2-135 of this title;

8 40. "Retail salesperson" means a salesperson soliciting orders  
9 from and calling upon retail alcoholic beverage stores with regard  
10 to his or her product;

11 41. "Occupation" as used in connection with "occupation tax"  
12 means the sites occupied as the places of business of the  
13 manufacturers, brewers, wholesalers, beer distributors, retailers,  
14 mixed beverage licensees, on-premises beer and wine licensees,  
15 bottle clubs, caterers, public event and special event licensees;

16 42. "Original package" means any container of alcoholic  
17 beverage filled and stamped or sealed by the manufacturer or brewer;

18 43. "Package store" means any sole proprietor or partnership  
19 that qualifies to sell wine, beer and/or spirits for off-premise  
20 consumption and that is not a grocery store, convenience store or  
21 drug store, or other retail outlet that is not permitted to sell  
22 wine or beer for off-premise consumption;

23 44. "Patron" means any person, customer or visitor who is not  
24 employed by a licensee or who is not a licensee;

1 45. "Person" means an individual, any type of partnership,  
2 corporation, association, limited liability company or any  
3 individual involved in the legal structure of any such business  
4 entity;

5 46. "Premises" means the grounds and all buildings and  
6 appurtenances pertaining to the grounds including any adjacent  
7 premises if under the direct or indirect control of the licensee and  
8 the rooms and equipment under the control of the licensee and used  
9 in connection with or in furtherance of the business covered by a  
10 license. Provided that the ABLE Commission shall have the authority  
11 to designate areas to be excluded from the licensed premises solely  
12 for the purpose of:

- 13 a. allowing the presence and consumption of alcoholic  
14 beverages by private parties which are closed to the  
15 general public, or
- 16 b. allowing the services of a caterer serving alcoholic  
17 beverages provided by a private party.

18 This exception shall in no way limit the licensee's concurrent  
19 responsibility for any violations of the Oklahoma Alcoholic Beverage  
20 Control Act occurring on the licensed premises;

21 47. "Private event" means a social gathering or event attended  
22 by invited guests who share a common cause, membership, business or  
23 task and have a prior established relationship. For purposes of  
24 this definition, advertisement for general public attendance or

1 sales of tickets to the general public shall not constitute a  
2 private event;

3 48. "Public event" means any event that can be attended by the  
4 general public;

5 49. "Rectifier" means any person who rectifies, purifies or  
6 refines spirits or wines by any process (other than by original and  
7 continuous distillation, or original and continuous processing, from  
8 mash, wort, wash or other substance, through continuous closed  
9 vessels and pipes, until the production thereof is complete), and  
10 any person who, without rectifying, purifying or refining spirits,  
11 shall by mixing (except for immediate consumption on the premises  
12 where mixed) such spirits, wine or other liquor with any material,  
13 manufactures any spurious, imitation or compound liquors for sale,  
14 under the name of whiskey, brandy, rum, gin, wine, spirits, cordials  
15 or any other name;

16 50. "Regulation" or "rule" means a formal rule of general  
17 application promulgated by the ABLE Commission as herein required;

18 51. "Restaurant" means an establishment that is licensed to  
19 sell alcoholic beverages by the individual drink for on-premises  
20 consumption and where food is prepared and sold for immediate  
21 consumption on the premises;

22 52. "Retail container for spirits and wines" means an original  
23 package of any capacity approved by the United States Bureau of  
24 Alcohol, Tobacco and Firearms;

1       53. "Retailer" means a package store, grocery store,  
2 convenience store or drug store licensed to sell alcoholic beverages  
3 for off-premise consumption pursuant to a Retail Spirits License,  
4 Retail Wine License or Retail Beer License;

5       54. "Sale" means any transfer, exchange or barter in any manner  
6 or by any means whatsoever, and includes and means all sales made by  
7 any person, whether as principal, proprietor or as an agent, servant  
8 or employee. The term "sale" is also declared to be and include the  
9 use or consumption in this state of any alcoholic beverage obtained  
10 within or imported from without this state, upon which the excise  
11 tax levied by the Oklahoma Alcoholic Beverage Control Act has not  
12 been paid or exempted;

13       55. "Short-order food" means food other than full meals  
14 including but not limited to sandwiches, soups and salads. Provided  
15 that popcorn, chips and other similar snack food shall not be  
16 considered "short-order food";

17       56. "Small brewer" means a brewer who manufactures sixty-five  
18 thousand (65,000) barrels of beer annually pursuant to a validly  
19 issued Small Brewer License hereunder;

20       57. "Small farm wine" means a wine that is produced by a small  
21 farm winery with seventy-five percent (75%) or more Oklahoma-grown  
22 grapes, berries, other fruits, honey or vegetables;

23       58. "Small farm winery" means a wine-making establishment that  
24 does not annually produce for sale more than fifteen thousand

1 (15,000) gallons of wine as reported on the United States Department  
2 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of  
3 Wine Premises Operations (TTB Form 5120.17);

4 59. "Sparkling wine" means champagne or any artificially  
5 carbonated wine;

6 60. "Special event" means an entertainment, recreation or  
7 marketing event that occurs at a single location on an irregular  
8 basis and at which alcoholic beverages are sold;

9 61. "Spirits" means any beverage other than wine or beer, which  
10 contains more than one-half of one percent (1/2 of 1%) alcohol  
11 measured by volume, and obtained by distillation, whether or not  
12 mixed with other substances in solution and includes those products  
13 known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and  
14 fortified wines and similar compounds, but shall not include any  
15 alcohol liquid completely denatured in accordance with the Acts of  
16 Congress and regulations pursuant thereto;

17 62. "Strong beer" means beer which, prior to October 1, 2018,  
18 was distributed pursuant to the Oklahoma Alcoholic Beverage Control  
19 Act, Section 501 et seq. of Title 37 of the Oklahoma Statutes;

20 63. "Successor brewer" means a primary source of supply, a  
21 brewer, a cider manufacturer or an importer that acquires rights to  
22 a beer or cider brand from a predecessor brewer;

23 64. "Tax Commission" means the Oklahoma Tax Commission;

24

1       65. "Territory" means a geographic region with a specified  
2 boundary;

3       66. "Wine and spirits wholesaler" or "wine and spirits  
4 distributor" means and includes any sole proprietorship or  
5 partnership licensed to distribute wine and spirits in the state.  
6 The term "wholesaler", as used the Oklahoma Alcoholic Beverage  
7 Control Act, shall be construed to refer to a wine and spirits  
8 wholesaler; and

9       67. "Wine" means and includes any beverage containing more than  
10 one-half of one percent (1/2 of 1%) alcohol by volume and not more  
11 than twenty-four percent (24%) alcohol by volume at sixty (60)  
12 degrees Fahrenheit obtained by the fermentation of the natural  
13 contents of fruits, vegetables, honey, milk or other products  
14 containing sugar, whether or not other ingredients are added, and  
15 includes vermouth and sake, known as Japanese rice wine.

16       Words in the plural include the singular, and vice versa, and  
17 words imparting the masculine gender include the feminine, as well  
18 as persons and licensees as defined in this section.

19       SECTION 2. This act shall become effective November 1, 2020.

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21       57-2-4023       NP       3/10/2020 1:30:20 PM

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