

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 CONFERENCE COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL 1964

By: Ford of the Senate

and

6 Jones of the House

7  
8  
9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to intoxicating liquor; amending 37  
11 O.S. 2001, Section 594, which relates to caterer  
12 license; allowing caterer license for certain purpose  
13 on licensed and unlicensed premises; defining term;  
14 disallowing caterer license for alcohol sales only;  
15 requiring food sales to exceed certain percentage of  
16 total combined sales in calendar year for license  
17 renewal; stating caterer not required to prepare food  
18 for every event; requiring annual sales report with  
19 certain revenue information; counting low-point beer  
20 separately from food and alcoholic beverage sales;  
21 designating time for submitting annual reporting;  
22 prohibiting renewal of caterer license for failure to  
23 complete report; requiring monthly event report with  
24 certain information; making certain events reportable  
within certain period of event; stating when to file  
monthly reports; providing reports be submitted  
electronically; providing exception to electronic  
reporting; requiring certain records retention for  
certain period; authorizing suspending caterer  
license for failure to make certain reports; setting  
term of suspension; declining renewal of caterer  
license when alcoholic beverage sales exceed certain  
percentage of combined sales; allowing licensed  
caterer to provide alcoholic beverage sales for  
certain person without license under certain  
conditions; requiring reasonable steps for  
supervision by licensed employee; disallowing  
discipline for failing to provide supervision; making

1 caterer liable for violations of applicant; requiring  
2 written agreement be submitted to ABLE Commission  
3 within certain time; limiting term for use of  
4 licensed caterer on unlicensed premises; amending 37  
5 O.S. 598, as amended by Section 29, Chapter 460,  
6 O.S.L. 2002 (37 O.S. Supp. 2009, Section 598), which  
7 relates to prohibition of persons under age in bar  
8 areas; deleting certain definition; providing low-  
9 point beer be counted separate from food or alcoholic  
10 beverages; authorizing certain bar area for certain  
11 period of time for new licensee; requiring proof for  
12 continued bar area; allowing purpose of licensee's  
13 business to convert to sale of alcoholic beverages  
14 upon failure to satisfy burden of proof; and  
15 declaring an emergency.

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

SECTION 1. AMENDATORY 37 O.S. 2001, Section 594, is  
amended to read as follows:

Section 594. A. 1. A caterer license may be issued to any  
~~corporation, association, individual, or limited liability company,~~  
~~or any type of partnership~~ person for the purpose of sale, delivery  
or distribution of alcoholic beverages ~~for on-premises consumption~~  
incidental to the sale or distribution of food on a premises not  
licensed by the ABLE Commission. For purposes of this section,  
"incidental to the sale or distribution of food" means food sales  
constituting at least thirty-five percent (35%) of the caterer's  
total combined annual sales. A caterer license shall not be issued  
to a person whose main purpose is the sale of alcoholic beverages or  
low-point beer.

1        2. A caterer license may only be issued to those persons that  
2 prepare, sell and distribute food for consumption either on a  
3 licensed or unlicensed premises. In order to renew a caterer  
4 license, annual food sales must constitute at least thirty-five  
5 percent (35%) of the caterer's total combined sales based on the  
6 most recent calendar year. A caterer shall not be required to  
7 prepare, sell and distribute food at every catered event as long as  
8 the caterer satisfies the requirement set forth in this section.

9        3. Each caterer shall submit an annual sales report containing  
10 revenue attributable to alcoholic beverages, food, low-point beer,  
11 and all other revenues attributable to the catering service. For  
12 purposes of this section, low-point beer shall be counted separately  
13 and it shall not be counted either as food or an alcoholic beverage.  
14 The annual sales report must be submitted thirty (30) days prior to  
15 expiration of the caterer license on forms prescribed by the ABLE  
16 Commission. The caterer license may not be renewed if the caterer  
17 fails to provide complete or sufficient financial data.

18        4. Each caterer shall submit a monthly event report containing  
19 information on all events scheduled for the subsequent month. If an  
20 event is scheduled after the first day of the month for an event to  
21 occur in the same month, then the caterer shall report that event  
22 within twenty-four (24) hours of scheduling the event or within  
23 twenty-four (24) hours prior to the event, whichever occurs first.  
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1 The monthly event report shall be submitted on the first day of each  
2 month.

3 5. All reports shall be submitted electronically on forms  
4 prescribed by the ABLE Commission. Provided, if the caterer does  
5 not have access to the Internet, then monthly reports must be  
6 submitted by facsimile to the ABLE Commission's office in Oklahoma  
7 City, in which case the caterer must retain a copy of the facsimile  
8 confirmation sheet for at least twelve (12) months.

9 6. Any caterer who fails to submit a monthly report shall have  
10 the caterer license automatically suspended until such time that the  
11 caterer has fully complied with all reporting requirements. Any  
12 caterer whose annual food sales do not exceed thirty-five percent  
13 (35%) of his or her total annual combined sales shall not have the  
14 caterer's license renewed.

15 B. The ABLE Commission shall adopt rules governing the  
16 application for and the issuance of caterer licenses.

17 C. The restrictions and regulations which apply to the sale of  
18 mixed beverages on the premises of a mixed beverage licensee also  
19 apply to the sale under the authority of a caterer license. Any act  
20 which if done on the premises of a mixed beverage licensee would be  
21 a ground for revocation or suspension of the mixed beverage license  
22 is a ground for revocation or suspension of a caterer license.

23 D. If the premises, where the event being catered is held, are  
24 already operating pursuant to another type of license issued by the

1 ABLE Commission, the caterer and other said licensee shall both be  
2 responsible for the actions of the caterer and shall both be subject  
3 to penalties for violations, by the caterer, of the Oklahoma  
4 Alcoholic Beverage Control Act and any rules promulgated thereto.

5 E. A caterer licensee may not store alcoholic beverages unless  
6 said licensee has a storage license issued by the ABLE Commission.

7 F. A caterer may provide alcoholic beverage sales on the  
8 premises of a person currently applying for a mixed beverage  
9 license, provided the following terms have been satisfied:

10 1. The caterer shall take reasonable steps to ensure that the  
11 mixed beverage applicant uses only licensed employees to perform  
12 licensable activities while using the caterer's license. The  
13 caterer shall use his or her best efforts to attempt to have a  
14 licensed employee on-site supervising the sale of such caterer's  
15 alcoholic beverages at all times, but the caterer shall not be  
16 disciplined for failing to have a licensed employee on-site. The  
17 caterer expressly acknowledges that he or she is liable for all  
18 violations of ABLE Commission statutes and rules that are committed  
19 by the mixed beverage applicant and its employees during this  
20 period;

21 2. The caterer and mixed beverage applicant must submit to the  
22 ABLE Commission a written agreement setting forth all the terms of  
23 the catering agreement at least twenty-four (24) hours prior to the  
24 commencement of the catered event; and

1        3. The caterer may not provide alcoholic beverage sales on the  
2 unlicensed premises of the mixed beverage applicant for more than  
3 sixty (60) days, or after the applicant's license has been denied,  
4 whichever occurs first.

5        SECTION 2.        AMENDATORY        37 O.S. 2001, Section 598, as  
6 amended by Section 29, Chapter 460, O.S.L. 2002 (37 O.S. Supp. 2009,  
7 Section 598), is amended to read as follows:

8        Section 598. A. 1. If the premises of a licensee of the  
9 Alcoholic Beverage Laws Enforcement Commission contains a separate  
10 or enclosed lounge or bar area, which has as its main purpose the  
11 sale or distribution<sup>7</sup> of alcoholic beverages for on-premises  
12 consumption, notwithstanding that as an incidental service, meals or  
13 short order foods are made available therein, no person under  
14 twenty-one (21) years of age shall be admitted to such area, except  
15 for members of a musical band employed or hired as provided in  
16 paragraph 2 of subsection B of Section 537 of this title when the  
17 band is to perform within such area, or persons under twenty-one  
18 (21) years of age who are on the licensed premises for the limited  
19 purpose of performing maintenance, construction, remodeling,  
20 painting or other similar services relating to the building or  
21 equipment installation, repair or maintenance on the premises during  
22 those hours when the licensed establishment is closed for business.  
23 The provisions of this section shall not prohibit persons under  
24 twenty-one (21) years of age from being admitted to an area which

1 has as its main purpose some objective other than the sale or mixing  
2 or serving of said beverages, in which sales or serving of said  
3 beverages are incidental to the main purpose, as long as the persons  
4 under twenty-one (21) years of age are not sold or served alcoholic  
5 beverages. The incidental service of food in the bar area shall not  
6 exempt a licensee from the provisions of this section. The ABLE  
7 Commission shall have the authority to designate the portions of the  
8 premises of a licensee where persons under twenty-one (21) years of  
9 age shall not be admitted pursuant to this section. ~~For purposes of~~  
10 ~~this section only, the term "alcoholic beverages" shall include low-~~  
11 ~~point beer, as defined in Section 163.2 of this title~~ When  
12 determining a licensee's main purpose, low-point beer sales shall be  
13 counted separately and it shall not be considered a food or an  
14 alcoholic beverage.

15 2. A new licensee that claims as its main purpose some  
16 objective other than the sale of alcoholic beverages may be granted  
17 a separate or enclosed lounge or bar area for a period of ninety  
18 (90) days. At the end of that ninety-day period, the licensee shall  
19 have the burden of showing that the business continues to qualify  
20 for a separate or enclosed bar area. If the licensee fails to  
21 satisfy this burden, then that licensee's main purpose shall  
22 automatically convert to the sale of alcoholic beverages.

23 B. Except as otherwise provided, an admission charge shall not  
24 be considered in any calculation designed to determine the main

1 purpose of an establishment pursuant to subsection A of this  
2 section. As used in this section, "admission charge" means any form  
3 of consideration received by an establishment from a person in order  
4 for that person to gain entrance into the establishment.

5 C. The provisions of subsection B of this section shall not  
6 apply:

7 1. If only persons eighteen (18) years of age or older are  
8 permitted to enter the licensed premises; provided however, if the  
9 licensee is claiming an exception from the requirements of  
10 subsection B of this section pursuant to this paragraph and fails to  
11 restrict the entry by persons under age eighteen (18) into the  
12 licensed premises, the ABLE Commission shall designate that only  
13 persons twenty-one (21) years of age or older are allowed on the  
14 licensed premises;

15 2. If the licensed premises are owned or operated by a service  
16 organization or fraternal establishment which is exempt under  
17 Section 501(c)(19), (8), or (10) of the Internal Revenue Code; or

18 3. To a public event held in a facility owned or operated by  
19 any agency, political subdivision or public trust of this state.

20 D. The ABLE Commission shall promulgate rules necessary to  
21 implement the provisions of this section.

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

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