

1 ENGROSSED SENATE
2 BILL NO. 1333

By: Bice of the Senate

3 and

4 McEntire of the House
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6 An Act relating to alcoholic beverages; amending
7 Section 3, Chapter 366, O.S.L. 2016, as amended by
8 Section 5, Chapter 381, O.S.L. 2017 (37A O.S. Supp.
9 2017, Section 1-103), which relates to the Alcoholic
Beverage Control Act; modifying definition; updating
statutory references; and providing an effective
date.
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12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY Section 3, Chapter 366, O.S.L.
14 2016, as amended by Section 5, Chapter 381, O.S.L. 2017 (37A O.S.
15 Supp. 2017, Section 1-103), is amended to read as follows:

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

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

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

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

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

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

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

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

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
8 manufacturer to identify a specific beer and to distinguish that
9 product from another beer;

10 10. "Brand extension" means:

11 a. after ~~the effective date of this act~~ October 1, 2018,
12 any brand of beer introduced by a manufacturer in this
13 state which either:

14 (1) incorporates all or a substantial part of the
15 unique features of a preexisting brand of the
16 same licensed manufacturer, 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 manufacturer, the majority of
20 whose total volume of all brands of beer distributed
21 in this state by such manufacturer on January 1, 2016,
22 was distributed as low-point beer, desires to sell,
23 introduces, begins selling or theretofore has sold and
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desires to continue selling a strong beer in this
state which either:

(1) incorporates or incorporated all or a substantial
part of the unique features of a preexisting low-
point beer brand of the same licensed
manufacturer, or

(2) relies or relied to a significant extent on the
goodwill associated with a preexisting low-point
beer brand;

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

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

13. "Cider" means any alcoholic beverage obtained by the
alcoholic fermentation of fruit juice, including but not limited to
flavored, sparkling or carbonated cider. For the purposes of the
distribution of this product, cider may be distributed by either
wine and spirits wholesalers or beer distributors;

14. "Convenience store" means any person primarily engaged in
retailing a limited range of general household items and groceries,

1 with extended hours of operation, whether or not engaged in retail
2 sales of automotive fuels in combination with such sales;

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

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

9 17. "Distiller" means any person who produces spirits from any
10 source or substance, or any person who brews or makes mash, wort or
11 wash, fit for distillation or for the production of spirits (except
12 a person making or using such material in the authorized production
13 of wine or beer, or the production of vinegar by fermentation), or
14 any person who by any process separates alcoholic spirits from any
15 fermented substance, or any person who, making or keeping mash, wort
16 or wash, has also in his or her possession or use a still;

17 18. "Distributor agreement" means the written agreement between
18 the distributor and manufacturer as set forth in Section 3-108 of
19 this title;

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

22 20. "Dual-strength beer" means a brand of beer that,
23 immediately prior to ~~the effective date of this act~~ October 1, 2018,
24 was being sold and distributed in this state:

- a. as a low-point beer pursuant to the Low-Point Beer Distribution Act in effect immediately prior to ~~the effective date of this act~~ October 1, 2018, and
- b. as strong beer pursuant to the Alcoholic Beverage Control Act in effect immediately prior to ~~the effective date of this act~~ October 1, 2018.

Dual-strength beer does not include a brand of beer that arose as a result of a brand extension as defined in this section;

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

22. "Good cause" means:

- a. failure by the distributor to comply with the material and reasonable provisions of a written agreement or understanding with the manufacturer, or
- b. failure by the distributor to comply with the duty of good faith;

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

1 24. "Grocery store" means a person primarily engaged in
2 retailing a general line of food, such as canned or frozen foods,
3 fresh fruits and vegetables, and fresh and prepared meats, fish and
4 poultry;

5 25. "Hotel" or "motel" means an establishment which is licensed
6 to sell alcoholic beverages by the individual drink and which
7 contains guestroom accommodations with respect to which the
8 predominant relationship existing between the occupants thereof and
9 the owner or operator of the establishment is that of innkeeper and
10 guest. For purposes of this section, the existence of other legal
11 relationships as between some occupants and the owner or operator
12 thereof shall be immaterial;

13 26. "Legal newspaper" means a newspaper meeting the requisites
14 of a newspaper for publication of legal notices as prescribed in
15 Sections 101 through 114 of Title 25 of the Oklahoma Statutes;

16 27. "Licensee" means any person holding a license under the
17 Oklahoma Alcoholic Beverage Control Act, and any agent, servant or
18 employee of such licensee while in the performance of any act or
19 duty in connection with the licensed business or on the licensed
20 premises;

21 28. "Low-point beer" shall mean any beverages containing more
22 than one-half of one percent ($1/2$ of 1%) alcohol by volume, and not
23 more than three and two-tenths percent (3.2%) alcohol by weight,
24 including but not limited to, beer or cereal malt beverages obtained

1 by the alcoholic fermentation of an infusion by barley or other
2 grain, malt or similar products;

3 29. "Manufacturer" means a brewer, distiller, winemaker,
4 rectifier or bottler of any alcoholic beverage and its subsidiaries,
5 affiliates and parent companies;

6 30. "Manufacturer's agent" means a salaried or commissioned
7 salesperson who is the agent authorized to act on behalf of the
8 manufacturer or nonresident seller in the state;

9 31. "Meals" means foods commonly ordered at lunch or dinner and
10 at least part of which is cooked on the licensed premises and
11 requires the use of dining implements for consumption. Provided,
12 that the service of only food such as appetizers, sandwiches, salads
13 or desserts shall not be considered "meals";

14 32. "Mini-bar" means a closed container, either refrigerated in
15 whole or in part, or nonrefrigerated, and access to the interior of
16 which is:

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

20 33. "Mixed beverage cooler" means any beverage, by whatever
21 name designated, consisting of an alcoholic beverage and fruit or
22 vegetable juice, fruit or vegetable flavorings, dairy products or
23 carbonated water containing more than one-half of one percent (1/2
24 of 1%) of alcohol measured by volume but not more than seven percent

1 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is
2 packaged in a container not larger than three hundred seventy-five
3 (375) milliliters. Such term shall include but not be limited to
4 the beverage popularly known as a "wine cooler";

5 34. "Mixed beverages" means one or more servings of a beverage
6 composed in whole or part of an alcoholic beverage in a sealed or
7 unsealed container of any legal size for consumption on the premises
8 where served or sold by the holder of a mixed beverage, beer and
9 wine, caterer, public event, charitable event or special event
10 license;

11 35. "Motion picture theater" means an establishment which is
12 licensed by Section 2-110 of this title to sell alcoholic beverages
13 by the individual drink and where motion pictures are exhibited, and
14 to which the general public is admitted;

15 36. "Nonresident seller" means any person licensed pursuant to
16 Section 2-135 of this title;

17 37. "Retail salesperson" means a salesperson soliciting orders
18 from and calling upon retail alcoholic beverage stores with regard
19 to his or her product;

20 38. "Occupation" as used in connection with "occupation tax"
21 means the sites occupied as the places of business of the
22 manufacturers, wholesalers, beer distributors, retailers, mixed
23 beverage licensees, on-premises beer and wine licensees, bottle
24 clubs, caterers, public event and special event licensees;

1 39. "Original package" means any container of alcoholic
2 beverage filled and stamped or sealed by the manufacturer;

3 40. "Package store" means any sole proprietor or partnership
4 that qualifies to sell wine, beer and/or spirits for off-premise
5 consumption and that is not a grocery store, convenience store or
6 drug store, or other retail outlet that is not permitted to sell
7 wine or beer for off-premise consumption;

8 41. "Patron" means any person, customer or visitor who is not
9 employed by a licensee or who is not a licensee;

10 42. "Person" means an individual, any type of partnership,
11 corporation, association, limited liability company or any
12 individual involved in the legal structure of any such business
13 entity;

14 43. "Premises" means the grounds and all buildings and
15 appurtenances pertaining to the grounds including any adjacent
16 premises if under the direct or indirect control of the licensee and
17 the rooms and equipment under the control of the licensee and used
18 in connection with or in furtherance of the business covered by a
19 license. Provided that the ABLE Commission shall have the authority
20 to designate areas to be excluded from the licensed premises solely
21 for the purpose of:

- 22 a. allowing the presence and consumption of alcoholic
23 beverages by private parties which are closed to the
24 general public, or

1 b. allowing the services of a caterer serving alcoholic
2 beverages provided by a private party.

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

6 44. "Private event" means a social gathering or event attended
7 by invited guests who share a common cause, membership, business or
8 task and have a prior established relationship. For purposes of
9 this definition, advertisement for general public attendance or
10 sales of tickets to the general public shall not constitute a
11 private event;

12 45. "Public event" means any event that can be attended by the
13 general public;

14 46. "Rectifier" means any person who rectifies, purifies or
15 refines spirits or wines by any process (other than by original and
16 continuous distillation, or original and continuous processing, from
17 mash, wort, wash or other substance, through continuous closed
18 vessels and pipes, until the production thereof is complete), and
19 any person who, without rectifying, purifying or refining spirits,
20 shall by mixing (except for immediate consumption on the premises
21 where mixed) such spirits, wine or other liquor with any material,
22 manufactures any spurious, imitation or compound liquors for sale,
23 under the name of whiskey, brandy, rum, gin, wine, spirits, cordials
24 or any other name;

1 47. "Regulation" or "rule" means a formal rule of general
2 application promulgated by the ABLE Commission as herein required;

3 48. "Restaurant" means an establishment that is licensed to
4 sell alcoholic beverages by the individual drink for on-premises
5 consumption and where food is prepared and sold for immediate
6 consumption on the premises;

7 49. "Retail container for spirits and wines" means an original
8 package of any capacity approved by the United States Bureau of
9 Alcohol, Tobacco and Firearms;

10 50. "Retailer" means a package store, grocery store,
11 convenience store or drug store licensed to sell alcoholic beverages
12 for off-premise consumption pursuant to a Retail Spirits License,
13 Retail Wine License or Retail Beer License;

14 51. "Sale" means any transfer, exchange or barter in any manner
15 or by any means whatsoever, and includes and means all sales made by
16 any person, whether as principal, proprietor or as an agent, servant
17 or employee. The term "sale" is also declared to be and include the
18 use or consumption in this state of any alcoholic beverage obtained
19 within or imported from without this state, upon which the excise
20 tax levied by the Oklahoma Alcoholic Beverage Control Act has not
21 been paid or exempted;

22 52. "Short-order food" means food other than full meals
23 including but not limited to sandwiches, soups and salads. Provided
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1 that popcorn, chips and other similar snack food shall not be
2 considered "short-order food";

3 53. "Small brewer" means a brewer who manufactures less than
4 ~~twenty-five thousand (25,000)~~ sixty-five thousand (65,000) barrels
5 of beer annually pursuant to a validly issued Small Brewer License
6 hereunder;

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

10 55. "Small farm winery" means a wine-making establishment that
11 does not annually produce for sale more than fifteen thousand
12 (15,000) gallons of wine as reported on the United States Department
13 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of
14 Wine Premises Operations (TTB Form 5120.17);

15 56. "Sparkling wine" means champagne or any artificially
16 carbonated wine;

17 57. "Special event" means an entertainment, recreation or
18 marketing event that occurs at a single location on an irregular
19 basis and at which alcoholic beverages are sold;

20 58. "Spirits" means any beverage other than wine or beer, which
21 contains more than one-half of one percent (1/2 of 1%) alcohol
22 measured by volume, and obtained by distillation, whether or not
23 mixed with other substances in solution and includes those products
24 known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and

1 fortified wines and similar compounds, but shall not include any
2 alcohol liquid completely denatured in accordance with the Acts of
3 Congress and regulations pursuant thereto;

4 59. "Strong beer" means beer which, prior to ~~the effective date~~
5 ~~of this act~~ October 1, 2018, was distributed pursuant to the
6 Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of
7 Title 37 of the Oklahoma Statutes;

8 60. "Successor manufacturer" means a primary source of supply,
9 a brewer or an importer that acquires rights to a beer brand from a
10 predecessor manufacturer;

11 61. "Tax Commission" means the Oklahoma Tax Commission;

12 62. "Territory" means a geographic region with a specified
13 boundary;

14 63. "Wine and spirits wholesaler" or "wine and spirits
15 distributor" means and includes any sole proprietorship or
16 partnership licensed to distribute wine and spirits in the state.
17 The term "wholesaler", as used in this act, shall be construed to
18 refer to a wine and spirits wholesaler; and

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

3 Words in the plural include the singular, and vice versa, and
4 words imparting the masculine gender include the feminine, as well
5 as persons and licensees as defined in this section.

6 SECTION 2. This act shall become effective October 1, 2018.

7 Passed the Senate the 15th day of March, 2018.

8 _____
9 Presiding Officer of the Senate

10 Passed the House of Representatives the ____ day of _____,
11 2018.

12 _____
13 Presiding Officer of the House
14 of Representatives

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