

1 ENGROSSED SENATE
2 BILL NO. 1542

By: Bice of the Senate

3 and

4 Kannady of the House

5
6 [alcoholic beverages - Alcoholic Beverage Control
7 Act - policy and scope of act - ~~effective dates~~ -
8 emergency]

9
10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

11 SECTION 1. AMENDATORY Section 2, Chapter 366, O.S.L.
12 2016 (37A O.S. Supp. 2017, Section 1-102), is amended to read as
13 follows:

14 Section 1-102. A. The purpose of the Oklahoma Alcoholic
15 Beverage Control Act is to implement the provisions of Article
16 XVIIIIA of the Oklahoma Constitution, as referred to the people for
17 their approval or rejection by the Secretary of State pursuant to
18 the provisions of Enrolled Senate Joint Resolution No. 68 of the 2nd
19 Session of the 55th Oklahoma Legislature. The Legislature hereby
20 declares that the Oklahoma Alcoholic Beverage Control Act is deemed
21 to be a code, digest or revision of statutes pursuant to the
22 provisions of Section 57 of Article V of the Oklahoma Constitution.

23 B. All alcoholic beverages as herein defined except alcohol
24 produced for use as a motor fuel under a permit issued by the

Oklahoma State Department of Agriculture, Food, and Forestry shall be subject to the provisions of the Oklahoma Alcoholic Beverage Control Act.

C. The Legislature finds and declares that:

1. The state has a substantial interest in exercising its powers and the powers granted to the states by the Twenty-first Amendment to the Constitution of the United States and in regulating the structure of the state's alcoholic beverage industry including the activities of manufacturers, importers, wholesalers and retailers, the methods by which alcoholic beverages are marketed, and influences that affect the consumption levels of alcoholic beverages by the people of the state;

2. The state's system of regulating the manufacture, distribution and sale of alcoholic beverages has served this state and its citizens well and has contributed to the economic growth and stability of the state;

3. Changes in market dynamics and advances in technology may have altered the way the alcoholic beverage industry operates, but have not changed the state's desire for strict regulation of the manufacture, importation, distribution, marketing and sale of alcoholic beverages in accordance with the Oklahoma State Constitution and laws and regulations enacted by the Legislature and the Oklahoma Alcoholic Beverage Laws Enforcement Commission. Such regulation advances the interest of the state in ensuring a

1 competitive and orderly market in the distribution and sale of
2 alcoholic beverages, promoting temperance in the use and consumption
3 of alcoholic beverages, and facilitating the collection of excise
4 taxes and fees. The purpose of the state's regulatory system is to
5 promote these interests by requiring economic separation between the
6 tiers that contributes to a fair, open and competitive market
7 resulting in interbrand and other competition within each tier, and
8 prevents disorderly market conditions, including but not limited to
9 the domination of local markets and the undue influence of one tier
10 over another. This purpose is through any direct or indirect
11 ownership interest, or any other financial or business obligation;

12 4. The state maintains an interest in the promotion of
13 temperance as a paramount public health, safety and welfare concern.
14 The Legislature further reaffirms that temperance is achieved,
15 consistent with structural regulation that promotes a competitive
16 and orderly market, by controlled access to, and responsible use and
17 consumption of, alcoholic beverages by persons of legal drinking
18 age; and

19 5. All provisions of this act shall be literally construed for
20 the accomplishment of these purposes, and any exceptions are to be
21 narrowly interpreted and applied.

22 SECTION 2. AMENDATORY Section 4, Chapter 366, O.S.L.
23 2016, as amended by Section 9, Chapter 364, O.S.L. 2017 (37A O.S.
24 Supp. 2017, Section 1-104), is amended to read as follows:

1 Section 1-104. A. The Alcoholic Beverage Laws Enforcement
2 Commission created in Section 1 of Article XXVIII of the Oklahoma
3 Constitution is hereby re-created. The purpose of the Commission
4 shall be to enforce the alcoholic beverage laws of the state, and
5 the Commission shall have such power and authority to enforce such
6 laws, rules and regulations as shall be prescribed by the Oklahoma
7 Alcoholic Beverage Control Act.

8 B. The Commission shall consist of seven (7) members, to be
9 appointed by the Governor with the advice and consent of the State
10 Senate; provided, members serving on October 1, 2017, shall continue
11 to serve until such time as their terms would have expired pursuant
12 to the provisions of Section 1 of Article XXVIII of the Oklahoma
13 Constitution. Five of the members shall be at-large members
14 representing the lay citizenry. The remaining two members shall be
15 persons with law enforcement experience in this state. Any time
16 there is a vacancy on the Commission, the Governor shall appoint a
17 replacement, with the advice and consent of the State Senate, within
18 ninety (90) days.

19 C. Members of the Commission shall be appointed for a term of
20 five (5) years.

21 D. No more than four members of the Commission shall be
22 appointed from the same political party. No more than two members
23 of the Commission shall be appointed from the same federal
24 congressional district.

1 E. No member of the Commission shall hold any license
2 authorized by the Oklahoma Alcoholic Beverage Control Act, or have
3 any interest in any capacity, in the manufacture, sale, distribution
4 or transportation of alcoholic beverages.

5 F. The members of the Commission shall be removable from office
6 for cause as other officers not subject to impeachment.

7 G. The Commission shall appoint a Director, whose duties shall
8 be defined as provided in Section 1-108 of this title.

9 H. The State of Oklahoma shall take all necessary steps to
10 ensure the timely implementation of Enrolled Senate Joint Resolution
11 No. 68 of the 2nd Session of the 55th Oklahoma Legislature, if
12 approved by the voters. Consistent with this objective, the ABLE
13 Commission shall have the power to issue interim licenses prior to
14 October 1, 2018, as follows:

15 1. Except for the sale of wine or beer to the public, an
16 interim license shall allow all qualified retail wine and retail
17 beer licensees to perform all activities permissible under a full
18 license including but not limited to purchasing, stocking and
19 storing the wine and/or full-strength beer prior to October 1, 2018.
20 In order to qualify for an interim license, the licensee must
21 satisfy all the requirements set forth in Article XXVIII A of the
22 Oklahoma Constitution and this act. ~~The~~ This interim license shall
23 convert to a full license on October 1, 2018;

1 2. Package stores may install refrigerated coolers for the
2 storage of beer and wine prior to October 1, 2018, provided the
3 refrigerated coolers shall not be used to cool product below room
4 temperature prior to October 1, 2018; and

5 3. An interim license shall allow all qualified wine and
6 spirits wholesalers and beer distributors to perform all activities
7 permissible under a full license including but not limited to
8 selling and delivering wine and/or full-strength beer to all
9 qualified retail wine and retail beer licensees. A wine and spirits
10 wholesaler that has been designated by a manufacturer as the
11 exclusive distributor of its wine or spirits may post those
12 designated products by line-item, consistent with Section 3-116.2 of
13 this title, on September 15, 2018, for sale effective October 1,
14 2018. In order to qualify for an interim license, the wine and
15 spirits wholesaler and beer distributor must comply with the
16 provisions set forth in Article XXVIII A of the Oklahoma Constitution
17 and this act. The interim license shall convert to a full license
18 on October 1, 2018.

19 Provided, however, that a manufacturer is only permitted to sell
20 beer or cider to a beer distributor holding a valid interim license
21 pursuant to this section as follows:

- 22 a. such sales may begin no sooner than September 1, 2018,
- 23 b. the beer distributor either must be assigned a beer
- 24 distributor territory by the manufacturer pursuant to

1 a distributor agreement to begin October 1, 2018, or
2 be a brewer or an affiliate of a brewer that will be
3 permitted to distribute beer within two territories
4 pursuant to the provisions of subsection E of Section
5 3-108 of the this title, and

6 c. the interim license only permits sales to retailers by
7 the interim licensee either in the distribution
8 territory as set forth in the distributor agreement or
9 in the two territories permitted pursuant to the
10 provisions of subsection E of Section 3-108 of this
11 title.

12 I. No retail wine or retail beer licensee may sell wine and/or
13 beer, other than low-point beer, and no package store may sell
14 refrigerated wine and/or beer, prior to October 1, 2018. The sale
15 or refrigeration of wine and/or beer in violation of this subsection
16 shall result in the revocation of the interim license and a monetary
17 fine of Twenty-five Thousand Dollars (\$25,000.00).

18 SECTION 3. AMENDATORY Section 13, Chapter 366, O.S.L.
19 2016, as amended by Section 10, Chapter 364, O.S.L. 2017 (37A O.S.
20 Supp. 2017, Section 2-101), is amended to read as follows:

21 Section 2-101. A. Except as otherwise provided in this
22 section, the licenses issued by the ABLE Commission, and the annual
23 fees therefor, shall be as follows:

24 1. Brewer License..... \$1,250.00

1	2.	Small Brewer License.....	\$125.00
2	3.	Distiller License.....	\$3,125.00
3	4.	Winemaker License.....	\$625.00
4	5.	Small Farm Winery License.....	\$75.00
5	6.	Rectifier License.....	\$3,125.00
6	7.	Wine and Spirits Wholesaler License.....	\$3,000.00
7	8.	Beer Distributor License.....	\$750.00
8	9.	The following retail spirits license fees shall be	
9		determined by the latest Federal Decennial Census:	
10	a.	Retail Spirits License for cities and towns from 200	
11		to 2,500 population.....	\$305.00
12	b.	Retail Spirits License for cities and towns from 2,501	
13		to 5,000 population.....	\$605.00
14	c.	Retail Spirits License for cities and towns over 5,000	
15		population.....	\$905.00
16	10.	Retail Wine License.....	\$1,000.00
17	11.	Retail Beer License.....	\$500.00
18	12.	Mixed Beverage License.....	\$1,005.00
19			(initial license)
20			\$905.00
21			(renewal)
22	13.	Mixed Beverage/Caterer Combination License.....	\$1,250.00
23	14.	On Premises Beer and Wine License.....	\$500.00
24			(initial license)

1		\$450.00
2		(renewal)
3	15. Bottle Club License.....	\$1,000.00
4		(initial license)
5		\$900.00
6		(renewal)
7	16. Caterer License.....	\$1,005.00
8		(initial license)
9		\$905.00
10		(renewal)
11	17. Annual Special Event License.....	\$55.00
12	18. Quarterly Special Event License.....	\$55.00
13	19. Hotel Beverage License.....	\$1,005.00
14		(initial license)
15		\$905.00
16		(renewal)
17	20. Airline/Railroad Beverage License.....	\$1,005.00
18		(initial license)
19		\$905.00
20		(renewal)
21	21. Agent License.....	\$55.00
22	22. Employee License.....	\$30.00
23	23. Industrial License.....	\$23.00
24	24. Carrier License.....	\$23.00

1	25.	Private Carrier License.....	\$23.00
2	26.	Bonded Warehouse License.....	\$190.00
3	27.	Storage License.....	\$23.00
4	28.	Nonresident, Seller License or Manufacturer's	
5		License.....	\$750.00
6	29.	Manufacturer's Agent License.....	\$55.00
7	30.	Sacramental Wine Supplier License.....	\$100.00
8	31.	Charitable Auction License.....	\$1.00
9	32.	Charitable Alcoholic Beverage License.....	\$55.00
10	33.	Winemaker Self-Distribution License.....	\$750.00
11	34.	Annual Public Event License.....	\$1,005.00
12	35.	One-Time Public Event License.....	\$255.00
13	36.	Small Brewer Self-Distribution License.....	\$750.00
14	37.	Brewpub License.....	\$1,005.00
15	38.	Brewpub Self-Distribution License.....	\$750.00

B. 1. There shall be added to the initial or renewal fees for
 a Mixed Beverage License an administrative fee, which shall not be
 deemed to be a license fee, in the amount of Five Hundred Dollars
 (\$500.00), which shall be paid at the same time and in the same
 manner as the license fees prescribed by paragraph 10 of subsection
 A of this section; provided, this fee shall not be assessed against
 service organizations or fraternal beneficiary societies which are
 exempt under Section 501(c)(19), (8) or (10) of the Internal Revenue
 Code.

1 2. There shall be added to the fee for a Mixed Beverage/Caterer
2 Combination License an administrative fee, which shall not be deemed
3 to be a license fee, in the amount of Two Hundred Fifty Dollars
4 (\$250.00), which shall be paid at the same time and in the same
5 manner as the license fee prescribed by paragraph 11 of subsection A
6 of this section.

7 C. Notwithstanding the provisions of subsection A of this
8 section:

9 1. The license fee for a mixed beverage or bottle club license
10 for those service organizations or fraternal beneficiary societies
11 which are exempt under Section 501(c)(19), (8) or (10) of the
12 Internal Revenue Code shall be Five Hundred Dollars (\$500.00) per
13 year; and

14 2. The renewal fee for an airline/railroad beverage license
15 held by a railroad described in 49 U.S.C., Section 24301, shall be
16 One Hundred Dollars (\$100.00).

17 D. An applicant may apply for and receive both an on-premises
18 beer and wine license and a caterer license.

19 E. All licenses, except as otherwise provided, shall be valid
20 for one (1) year from date of issuance unless revoked or
21 surrendered. Provided, all employee licenses shall be valid for two
22 (2) years and all other licenses issued by the ABLE Commission prior
23 to October 1, 2018, with a one-year term shall be valid initially
24 from the date of issue until the earlier of the twentieth month

1 following the date of issue or December 31, 2019, and, if such
2 license is renewed, shall thereafter be treated as if issued on such
3 earlier date and subject to annual renewal on each anniversary of
4 such date.

5 F. The holder of a license, issued by the ABLE Commission, for
6 a bottle club located in a county of this state where the sale of
7 alcoholic beverages by the individual drink for on-premises
8 consumption has been authorized, may exchange the bottle club
9 license for a mixed beverage license or an on-premises beer and wine
10 license and operate the licensed premises as a mixed beverage
11 establishment or an on-premises beer and wine establishment subject
12 to the provisions of the Oklahoma Alcoholic Beverage Control Act.
13 There shall be no additional fee for such exchange and the mixed
14 beverage license or on-premises beer and wine license issued shall
15 expire one (1) year from the date of issuance of the original bottle
16 club license.

17 G. In addition to the applicable licensing fee, the following
18 surcharge shall be assessed annually on the following licenses:

- 19 1. Nonresident Seller or Manufacturer License..... \$2,500.00
- 20 2. Wine and Spirits Wholesaler License..... \$2,500.00
- 21 3. Beer Distributor..... \$1,000.00
- 22 4. Retail Spirits License for cities and towns
- 23 over 5,000 population..... \$250.00

5. Retail Spirits License for cities and towns
from 2,501 to 5,000 population..... \$200.00
6. Retail Spirits License for cities and towns
from 200 to 2,500 population..... \$150.00
7. Retail Wine License..... \$250.00
8. Retail Beer License..... \$250.00
9. Mixed Beverage License..... \$25.00
10. Mixed Beverage/Caterer Combination License..... \$25.00
11. Caterer License..... \$25.00
12. On-Premises Beer and Wine License..... \$25.00
13. Annual Public Event License..... \$25.00
14. Small Farm Winery License..... \$25.00
15. Small Brewer License..... \$35.00

The surcharge shall be paid concurrent with the licensee's annual licensing fee and shall be deposited in the Alcoholic Beverage Governance Revolving Fund established pursuant to Section 5-128 of this title.

H. Any license issued by the ABLE Commission under this title may be relied upon by other licensees as a valid license, and no other licensee shall have any obligation to independently determine the validity of such license or be held liable solely as a consequence of another licensee's failure to maintain a valid license.

SECTION 4. AMENDATORY Section 32, Chapter 366, O.S.L.

2016 (37A O.S. Supp. 2017, Section 2-120), is amended to read as follows:

Section 2-120. A wholesaler's agent license shall authorize the holder thereof:

1. To represent only the holders of licenses within this state, other than retailers, authorized to sell alcoholic beverages to retail dealers in Oklahoma; and

2. To solicit and to take orders for the purchase of alcoholic beverages from retailers including licensees authorized to sell alcoholic beverages by the individual drink for on-premises consumption.

Such license shall be issued only to agents and employees of the holder of a license under the Oklahoma Alcoholic Beverage Control Act, but no such license shall be required of an employee making sales of alcoholic beverages on licensed premises of the employee's principal or of an employee of the holder of a beer distributor license regardless of such employee's job responsibilities.

SECTION 5. AMENDATORY Section 33, Chapter 366, O.S.L.

2016 (37A O.S. Supp. 2017, Section 2-121), is amended to read as follows:

Section 2-121. An employee license shall authorize the holder thereof to work in a licensed package store, retail spirits, retail wine or retail beer establishment, brewpub, mixed beverage

1 establishment, beer and wine establishment, bottle club, public
2 event or any establishment where alcohol or alcoholic beverages are
3 sold, mixed or served. Persons employed by a mixed beverage, on-
4 premises beer and wine, retail wine, retail beer, public event or a
5 bottle club licensee who do not participate in the service, mixing
6 or sale of mixed beverages shall not be required to have an employee
7 license. Provided, however, that a manager employed by a mixed
8 beverage licensee, public event licensee or a bottle club shall be
9 required to have an employee license whether or not the manager
10 participates in the service, mixing or sale of mixed beverages.
11 Applicants for an employee license must be at least eighteen (18)
12 years of age and have a health card issued by the county in which
13 they are employed, if the county issues such a card; provided, the
14 provisions of this section shall not be construed to permit any
15 person under twenty-one (21) years of age to be employed to sell
16 spirits. Employees of a special event, caterer, unless catering a
17 mixed beverage-licensed premise or airline/railroad beverage
18 licensees shall not be required to obtain an employee license, and
19 employees of beer distributors and other licensees holding licenses
20 issued by the ABLE Commission shall not be required to obtain an
21 employee license if such employee only sells alcohol or alcoholic
22 beverages to establishments holding licenses issued by the ABLE
23 Commission and not to the public. Persons employed by a hotel
24 licensee who participate in the stocking of hotel room mini-bars or

1 in the handling of alcoholic beverages to be placed in such devices
2 shall be required to have an employee license. As a prerequisite to
3 the issuance of an employee license, the applicant shall be required
4 to have successfully completed a training program conducted by the
5 ABLE Commission, or by another entity approved by the ABLE
6 Commission, including an in-house training program conducted by the
7 employer.

8 SECTION 6. AMENDATORY Section 48, Chapter 366, O.S.L.
9 2016 (37A O.S. Supp. 2017, Section 2-136), is amended to read as
10 follows:

11 Section 2-136. A manufacturer's agent license shall authorize
12 the holder thereof to represent only the holders of a manufacturer's
13 license or nonresident seller license and to solicit and take orders
14 for the sale of wine and spirits for the purpose of resale. No such
15 license shall be issued to any person until it shall have been shown
16 to the satisfaction of the ABLE Commission that the applicant has
17 been duly authorized to act as the agent of the principal he or she
18 proposes to represent, and that the principal or principals he or
19 she proposes to represent has been duly authorized to do business in
20 the State of Oklahoma, and has appointed a service agent in this
21 state. No applicant for a manufacturer's agent license shall also
22 hold an agent license. It shall be unlawful for any person other
23 than the holder of a manufacturer's agent license or an agent
24

1 license to solicit or take orders in the state from a wine and
2 spirits wholesaler ~~or beer distributor~~.

3 SECTION 7. AMENDATORY Section 80, Chapter 366, O.S.L.
4 2016, as amended by Section 15, Chapter 364, O.S.L. 2017 (37A O.S.
5 Supp. 2017, Section 3-110), is amended to read as follows:

6 Section 3-110. A. A licensed distributor designated as the
7 licensed distributor for a beer brand within a designated sales
8 territory shall present that beer brand for sale to all on-premise
9 licensees on the same price basis and without discrimination and to
10 all off-premise licensees on the same price basis within a
11 particular county and without discrimination. A licensed
12 distributor shall not sell, supply or deliver, either directly or
13 indirectly through a third party, a beer brand to a licensed
14 retailer outside of the designated sales territory of the designated
15 distributor nor to any person the licensed distributor has reason to
16 believe will sell or supply any quantity of the beer brand to any
17 retail location outside of the designated sales territory of the
18 designated distributor.

19 B. All beer shall only be transported by a marked conveyance
20 owned or leased by the licensed distributor ~~and operated by the~~
21 ~~licensed distributor or an employee of the distributor~~ for the
22 products of a licensed manufacturer within the designated sales
23 territory to the address and location of a licensed retailer within
24 that designated sales territory.

1 C. Any beer sold by the licensed distributor shall not be
2 delivered to, received by or stored at any place other than the
3 address and location of the licensed retailer for which state and
4 local retailer licenses or permits have been issued.

5 D. With the approval of the licensed manufacturer, a licensed
6 distributor may sell the designated brands to a licensed retailer
7 located in a designated sales territory of another licensed
8 distributor if that licensed distributor is temporarily unable for
9 any reason to provide the designated brands of the licensed
10 manufacturer within its designated sales territory.

11 E. All beer purchased by a licensed distributor for resale in
12 this state shall physically come into the possession of the licensed
13 distributor and be unloaded in and distributed from the licensed
14 warehouses of the licensed distributor located in this state prior
15 to being resold in this state.

16 SECTION 8. Sections 1 and 3 through 7 of this act shall become
17 effective October 1, 2018.

18 ~~SECTION 9. Section 2 of this act shall become effective July 1,~~
19 ~~2018.~~

20 ~~SECTION 10. It being immediately necessary for the preservation~~
21 ~~of the public peace, health or safety, an emergency is hereby~~
22 ~~declared to exist, by reason whereof this act shall take effect and~~
23 ~~be in full force from and after its passage and approval.~~
24

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

2
3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2018.

7
8 _____
9 Presiding Officer of the House
10 of Representatives