

FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend amendment number 1 to SB1173
Page 1 Section Lines
Of the printed Bill
Of the Engrossed Bill

By restoring the title and enacting clause;

Page 2 of the amendment: By inserting after the "Page 49, Section 5, Line 19 and 20" amendment the following: Page 56, Section 7, Line 3-4 - by restoring "or Manufacturer's license";

By inserting after the "Page 56, Section 7, Line 16" amendment, the following: Page 58, Section 7, Line 19 - by restoring the phrase "or Manufacturer";

By inserting after the "Page 63, Section 9, Line 5" amendment, the following: Page 63, Section 10, Line 6 ½ - by inserting a new Section 10 (see attached);

By inserting after the "Page 63, Section 10, Line 14" amendment, the following: Page 64, Section 11, Line 10 - by inserting after the period "." the following sentence: "A manufacturer's license or nonresident seller license shall authorize the holder thereof to solicit and take orders for beer from the holders of licenses authorized to import the same into this state, and to ship or deliver, or cause to be shipped or delivered, beer into Oklahoma pursuant to such sales."

By inserting after the "Page 67, Section 12, Line 16" amendment, the following: Page 67, Section 13, Line 16 ½ - by inserting the following new Section 13 (see attached);

(SEE BELOW)

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Jon Echols

Adopted: _____

Reading Clerk

By inserting after the "Page 67, Section 12, Line 16" amendment, the following: Page 73, Section 15, Lines 7 and 8 - by inserting after the word "distributor" the following "or holder of a small brewer self-distribution license";

By inserting after the "Page 67, Section 12, Line 16" amendment, the following: Page 73, Section 15, Lines 8 and 9 - by striking the word "the" and deleting the word "beer" and on Line 9 by striking the word "distributor" and inserting in lieu thereof, the words "such licensees";

By inserting after the "Page 67, Section 12, Line 16" amendment, the following: Page 74, Section 16, Line 8 ½ - by inserting the following new Section 16 (see attached);

Page 4 of the amendment by amending the "Page 75, Section 16, Lines 1-5" amendment by adding after the number "2." the following "and 3.";

Page 4 of the amendment by removing in their entirety the following amendments:

"Page 75, Section 16, Line 6: By inserting after the word "designating" the words "wine and spirits";

Page 75, Section 16, Line 6: By deleting the word "exclusive";

Page 75, Section 16, Line 7: By deleting the words "one or more";

Page 75, Section 16, Line 8: By deleting the words "within the state";

Page 75, Section 16, Lines 10-11: By deleting the following "; provided, the" and inserting in lieu thereof, the following ". The";

Page 4 of the amendment by amending the "Page 75, Section 16, Line 11 ½" amendment by renumbering the paragraph from "3." to paragraph "2.";

By inserting after the "Page 75, Section 16, Line 11 ½" amendment the following: Page 80, Section 18 and 19, Line 1 - by inserting the following new Sections 18 and 19 (see attached); and

Page 4 of the amendment by changing the page "80" references to page "81".

SECTION 10. 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 establishment, beer and wine establishment, bottle club, public event or any establishment where alcohol or alcoholic beverages are sold, mixed or served. Persons employed by a mixed beverage, on-premises beer and wine, retail wine, retail beer, public event or a bottle club licensee who do not participate in the service, mixing or sale of mixed beverages shall not be required to have an employee license. Provided, however, that a manager employed by a mixed beverage licensee, public event licensee or a bottle club shall be required to have an employee license whether or not the manager participates in the service, mixing or sale of mixed beverages. Applicants for an employee license must be at least eighteen (18) years of age and have a health card issued by the county in which they are employed, if the county issues such a card; provided, the provisions of this section shall not be construed to permit any person under twenty-one (21) years of age to be employed to sell spirits. Employees of a beer distributor, wine and spirits wholesaler, special event, caterer, unless catering a mixed beverage-licensed premise or airline/railroad beverage licensees

shall not be required to obtain an employee license. Persons employed by a hotel licensee who participate in the stocking of hotel room mini-bars or in the handling of alcoholic beverages to be placed in such devices shall be required to have an employee license. As a prerequisite to the issuance of an employee license, the applicant shall be required to have successfully completed a training program conducted by the ABLE Commission, or by another entity approved by the ABLE Commission, including an in-house training program conducted by the employer.

SECTION 13. AMENDATORY Section 58, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2017, Section 2-146), is amended to read as follows:

Section 2-146. A. The ABLE Commission shall refuse to issue a wine and spirits wholesaler, beer distributor, retail spirits, retail wine or retail beer license, either on an original application or a renewal application, if it has reasonable grounds to believe and finds any of the following to be true:

1. Except in the case of a beer distributor, that the applicant is not a citizen of the United States or is not a qualified elector in this state, or has not been a continuous resident of this state for the five (5) years next preceding the application for the license;
2. That the applicant is under twenty-one (21) years of age;

3. That the applicant or any partner, or spouse of the applicant or any partner, has been convicted of a felony;

4. That the applicant or any partner, or spouse of the applicant or any partner, has been convicted of a violation of any state or federal law relating to alcoholic beverages, has forfeited a bond while any charge of such violation was pending, nor may any license be granted for any purpose under the Oklahoma Alcoholic Beverage Control Act to an Oklahoma resident, who has held or whose spouse has held a Federal Liquor Stamp in Oklahoma before the adoption of Article XXVIII A of the Oklahoma Constitution unless the Liquor Stamp was granted for supplying alcoholic beverages to a federal military installation, or was granted under the Oklahoma Alcoholic Beverage Control Act;

5. That the applicant or any partner has, within twelve (12) months next preceding the date of the application, violated any provision of the Oklahoma Alcoholic Beverage Control Act or rule of the ABLE Commission promulgated pursuant hereto. Provided, however, that if the ABLE Commission has, during such twelve-month period, suspended any license sought to be renewed, such renewal application may be approved if the term of the suspension has been completed and the applicant has complied with any special conditions imposed in connection with the suspension;

6. That the applicant is not of good moral character, or that the applicant is in the habit of using alcoholic beverages to

excess, or is mentally incapacitated. Provided, that the record in any municipal court showing a conviction of violation of any municipal ordinances or state statutes involving moral character or public nuisance obtained after passage and approval of the Oklahoma Alcoholic Beverage Control Act shall be received in evidence by the ABLE Commission;

7. That the applicant does not own or have a written lease for the premises for which a license is sought;

8. That the applicant, within twelve (12) months next preceding the date of application, has been the holder of a license revoked for cause;

9. That the applicant is not the real party in interest, or intends to carry on the business authorized by the license as the agent of another;

10. That the applicant, in the case of an application for renewal of any license, would not be eligible for such license on a first application;

11. That the applicant is a person who appoints or is a law enforcement official or is an employee of the ABLE Commission;

12. That the proposed location of the licensed premises would violate a valid municipal nondiscriminatory zoning ordinance;

13. That, in the case of an application for a wine and spirits wholesaler license or beer distributor license, any manufacturer, including an officer, director or principal stockholder thereof or

any partner, has any financial interest in the business to be conducted under the license, unless otherwise permitted by law;

14. That the issuance of the license applied for would result in a violation of any provision of the Oklahoma Alcoholic Beverage Control Act;

15. That, in the case of an application for a wine and spirits wholesaler or beer distributor license, the applicant or any partner, or spouse of the applicant or any partner, is the holder or partner of the holder of any other class of license issued under the provisions of the Oklahoma Alcoholic Beverage Control Act, other than an agent or employee license for employment by the applicant, or a storage license, bonded warehouse license, carrier license or private carrier license; provided, nothing shall prohibit a wine and spirits wholesaler, who is otherwise qualified, from maintaining beer distributor licenses in the state, nor a beer distributor, who is otherwise qualified, from maintaining a wine and spirits wholesaler license in the state;

16. That, in the case of an application for a retail spirits, retail wine or retail beer license, the applicant or any partner is the holder or partner of the holder, or employee of such holder of any other class of license issued under the provisions of the Oklahoma Alcoholic Beverage Control Act, other than a storage license or an employee license for the proposed licensed premises of the applicant; or

17. That the applicant or any partner, spouse, employee or other person affiliated with the applicant is not in compliance with the tax laws of this state as required in Article XXVIII A of the Oklahoma Constitution.

B. The provisions of this section shall not operate to prohibit the issuance of a beer distributor license to a corporation, limited liability company or partnership.

SECTION 16. AMENDATORY Section 85, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2017, Section 3-115), is amended to read as follows:

Section 3-115. To assure and control quality, a brewer, beer distributor or a holder of a small brewer self-distribution license or brewpub self-distribution license, at the time of a regular delivery, may withdraw with the permission of the retailer, a quantity of beer in undamaged original packaging from the retailer's stock if:

1. The brewer, beer distributor or holder of a small brewer self-distribution license or brewpub self-distribution license replaces the stock with beer of identical, equivalent value as the beer withdrawn; or

2. The stock is withdrawn within a reasonable period of time before the date, or immediately after the date, considered by the brewer of the product to be the date the product becomes inappropriate for sale to a consumer.

~~A consignment sale of beer is not authorized under this section.~~

If a beer distributor withdraws beer from a retailer's stock pursuant to this section, the brewer of such beer brand may compensate the beer distributor, in whole or in part, for the value of the withdrawn out-of-date product and replaced and the labor and other expenses of the beer distributor in withdrawing and replacing the product. No compensation shall be due or payable to the retailer if beer is withdrawn pursuant to this section so long as the withdrawn beer is replaced with beer of identical, equivalent value as the beer withdrawn.

SECTION 18. AMENDATORY Section 88, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2017, Section 3-118), is amended to read as follows:

Section 3-118. No alcoholic beverages intended for off-premise or on-premise consumption shall be sold at retail for less than a six percent (6%) markup, after calculation of permissible discounts and coupons, unless the sale meets one or more of the following conditions:

1. Where seasonable merchandise is sold in bona fide clearance sales, if advertised, marked and sold as such;
2. Where merchandise is imperfect or damaged or is being discontinued and is advertised, marked and sold as such;
3. Where merchandise is sold upon the final liquidation of any business;

4. Where merchandise is sold for charitable purposes or to relief agencies;

5. Where merchandise is sold on contract to departments of the government or governmental institutions;

6. Where merchandise is sold by any officer acting under the order or direction of any court; or

7. Where merchandise is sold at any bona fide auction sale.

SECTION 19. AMENDATORY Section 93, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2017, Section 3-123), is amended to read as follows:

Section 3-123. A. It shall be unlawful for any person privileged to sell alcoholic beverages to wholesalers or retailers:

1. To discriminate, directly or indirectly, in price between one wine and spirits wholesaler and another wine and spirits wholesaler, when that manufacturer has not designated a single wine and spirits wholesaler, or between one retailer and another retailer purchasing alcoholic beverages bearing the same brand or trade name and of like age and quality; or

2. To grant, directly or indirectly, any discount, rebate, free goods, allowance, instantly redeemable coupon, or other inducement, except mail-in rebates for alcoholic beverages and non-alcoholic beverage merchandise items, funded by the manufacturer and redeemed by the manufacturer (by itself or through a third-party fulfillment

company) for a discount or rebate on the alcoholic beverage and non-alcoholic item.

B. The ABLE Commission is hereby authorized to promulgate rules which are necessary to carry out the purpose of this section and to prevent its circumvention by offering or giving of any rebate, allowance, free goods, discount or any other thing or service of value; provided, the posting or invoicing of charges per order for processing minimum orders or per case for the handling or repacking of goods by wine and spirits wholesalers and beer distributors for sales in less than full case lots shall not constitute a violation of this section.

C. For the violation of any provision of this section or of any rule duly promulgated under this section, the ABLE Commission may suspend or revoke a license as follows:

1. For a first offense, not exceeding ten (10) days' suspension of license;

2. For a second offense, not exceeding thirty (30) days' suspension of license; and

3. For a third offense, the ABLE Commission shall revoke the license.

D. Nothing in this section shall prohibit any person privileged to sell alcoholic beverages to wholesalers or retailers from furnishing point of sale and point of purchase advertising material to retail licensees without charge. Further, manufacturers,

brewers, nonresident sellers, wholesalers, beer distributors, small brewer self-distributors, and brewpub self-distributors shall be permitted to engage in the following activities:

1. With permission of and at the direction of the retail licensee, stock, rotate, affix prices, and reset or rearrange alcoholic beverages that such manufacturer, brewer, nonresident seller, wholesaler, beer distributor, small brewer self-distributor or brewpub self-distributor manufactured or sold, directly or indirectly, to the retail licensee, provided products of competitors are not altered or disturbed except that, with the permission of the retail licensee, products of competitors may be altered or disturbed:

(a) as necessary to perform the reset and rearrangement of the products of the manufacturer, brewer, nonresident seller, wholesaler, beer distributor, small brewer self-distributor or brewpub self-distributor performing such reset and rearrangement, or

(b) to execute a retailer-chosen shelf plan or schematic for products of a competitor that is unwilling or unavailable to reset its product upon notice from the retail licensee.

2. With permission of and at the direction of the retail licensee, organize and construct displays of alcoholic beverages that such manufacturer, brewer, nonresident seller, wholesaler, beer distributor, small brewer self-distributor or brewpub self-

distributor manufactured or sold, directly or indirectly, to the retail licensee, provided that:

(a) such displays are accessible to the consumer, and

(b) products of competitors are not altered or disturbed, except that, with the permission of the retail licensee, products of competitors arranged in floor or end cap displays may be moved as necessary to permit the by the manufacturer, brewer, nonresident seller, wholesaler, beer distributor, small brewer self-distributor or brewpub self-distributor to perform the services otherwise allowed by this subsection.

3. Restock and rotate alcoholic beverage stock that such manufacturer, brewer, nonresident seller, wholesaler, beer distributor, small brewer self-distributor or brewpub self-distributor manufactured or sold, directly or indirectly, to the retail licensee from the retail licensee's storeroom, salesroom, displays, display counter, or cooler.

4. Withdraw a quantity of beer in undamaged original packaging from such retail licensee's stock, provided that that such Manufacturer, Brewer, Nonresident Seller, Beer Distributor, Small Brewer Self-Distributor or Brewpub Self Distributor manufactured or sold such beer, directly or indirectly, to the retail licensee and such removal is otherwise permitted under 37A O.S. Section 3-115.

5. Provide a recommended shelf plan or shelf schematic to a retail licensee for all or any portion of the alcoholic beverage inventory sold by the retail licensee.