

## FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1542 \_\_\_\_\_  
Page 1 Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the printed Bill  
Of the Engrossed Bill

By restoring the title and enacting clause;

Page 1, Section 1, Line 13½:

By inserting a new Section 1 to read as follows:  
(see attached);

Page 8, Section 3, Line ½:

By inserting a new Section 4 to read as follows:  
(see attached);

Page 13, Section 3, Line 22:

By inserting after the word "and" the following language ", in addition to Five Dollars (\$5.00) of the Employee License fee,";

Page 15, Section 5, Line 22:

By inserting after the word "a" and before the word "special" the following language: "beer distributor, wine and spirits wholesaler,";

Page 15 and 16, Section 5, Line 24 and 1-5:

By deleting all underlined language beginning with the comma "," on Line 24, Page 15 through the word "public" on Line 5, Page 16;

Page 16, Section 6, Line 13½:

By inserting a new Section 9 to read as follows:  
(see attached);

(AMENDMENTS CONTINUED BELOW)

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Amendment submitted by: Chris Kannady

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

Page 17, Section 7, Line 7½:

By inserting new Sections 10, 11 and 12 to read as follows:  
(see attached);

Page 18, Section 8, Line 21½:

By inserting new Sections 14 through 20 to read as follows:  
(see attached);

Page 18, Section 8, Line 22:

By deleting after the word "Sections" the phrase "1 and 3 through 7" and inserting in lieu thereof, the following language: "2 and 4 through 20";

Page 18, Section 8, Line 23:

By deleting after the word "effective" the word "October" and inserting in lieu thereof, the word "September";

Page 19, Section 9, Lines 1 and 2:

By restoring all of the stricken language;

Page 19, Section 9, Line 1:

By deleting the number "2" and inserting in lieu thereof, the following phrase "1 and 3"; and

Page 19, Section 10, Lines 3 through 6:

By restoring all of the stricken language.

1 "SECTION 1. AMENDATORY 37 O.S. 2011, Section 573, is  
2 amended to read as follows:

3 Section 573. A. Except as provided in subsection D of this  
4 section, no liquor, wine, or beer shall be labeled, offered or  
5 advertised for sale unless in accordance with such regulations and  
6 unless the brand label shall have been registered with and approved  
7 by the Alcoholic Beverage Laws Enforcement Commission and the  
8 appropriate fee paid as provided for in this section.

9 B. An application for registration of a brand label shall be  
10 filed by the owner of the brand if such owner is licensed by the  
11 ABLE Commission, however, if the owner is not licensed but is  
12 represented by a licensed nonresident seller, the nonresident seller  
13 licensee shall submit each label for each product he offers for sale  
14 in this state. Cordials and wines which differ only as to age or  
15 vintage year, as defined by such regulations, shall be considered  
16 the same brand; and those that differ as to type or class may be  
17 considered the same brand by the ABLE Commission where consistent  
18 with the purposes of this section.

19 C. The application for registration of a brand label shall be  
20 filed on a form prescribed by the ABLE Commission, and shall contain  
21 such information as the ABLE Commission shall require. Such  
22 application shall be accompanied by a certified check, bank  
23 officers' check or draft, or money order in the amount of the annual  
24

1 registration fee, or the properly prorated portion thereof  
2 prescribed by this section.

3 D. 1. The annual fee for registration of any brand label for  
4 liquor shall be Three Hundred Seventy-five Dollars (\$375.00); the  
5 annual fee for registration of any brand label for beer shall be Two  
6 Hundred Dollars (\$200.00); the annual fee for registration of any  
7 brand label for wine made in the United States, or for registration  
8 of any category of imported wine as defined by the ABLE Commission,  
9 shall be Two Hundred Dollars (\$200.00). Beer manufactured in this  
10 state shall be exempt from brand label registration fees.

11 2. Each brand label registered and approved pursuant to this  
12 section shall be valid for a term of up to one (1) year, expiring on  
13 the June 30 next following registration, and may be renewed for  
14 subsequent terms of one (1) year beginning on the July 1 following  
15 the initial registration. Brand registration fees for labels  
16 registered after July 1 may be prorated through the following June  
17 30 on a quarterly basis. The brand registration fee shall not be  
18 transferable unless otherwise allowed by law. A nonresident seller  
19 may transfer brand registrations to the brewer, distiller or winery  
20 that produces those brands, provided the brewer, distiller or winery  
21 has obtained a license at no expense to the nonresident seller,  
22 brewer, distiller or winery.  
23  
24

1 E. If the ABLE Commission shall deny the application for  
2 registration of a brand label it shall return the registration fee  
3 to the applicant, less twenty-five percent (25%) of such fee.

4 F. The ABLE Commission may at any time exempt any discontinued  
5 brand from fee provisions of this section where a manufacturer or  
6 wholesaler has an inventory of one hundred cases or less of liquor  
7 or wine and five hundred cases or less of beer, and certifies to the  
8 ABLE Commission in writing that such brand is being discontinued.

9 SECTION 4. AMENDATORY Section 8, Chapter 366, O.S.L.  
10 2016 (37A O.S. Supp. 2017, Section 1-108), is amended to read as  
11 follows:

12 Section 1-108. A. The ABLE Commission shall appoint a  
13 Director, who shall employ an Assistant Director and such other  
14 personnel as are necessary to properly enforce and administer the  
15 Oklahoma Alcoholic Beverage Control Act. The Director shall require  
16 bonds in such instances and amounts as the ABLE Commission may  
17 direct, and shall be in direct charge of all records. The Director  
18 shall further have the following specific powers and duties:

19 1. To issue licenses provided for in the Oklahoma Alcoholic  
20 Beverage Control Act, and to approve or reject any official bond  
21 required to be filed with the Director or the ABLE Commission;

22 2. To appoint and employ, supervise and discharge such  
23 employees as may be determined necessary for the proper discharge of  
24 the duties of the office of Director, upon duties and salary fixed

1 and determined by the ABLE Commission and subject to all the rules  
2 that may be promulgated by the ABLE Commission. The Director and  
3 the ABLE Commission, in appointing and employing personnel, shall  
4 give preference to honorably discharged members of the Armed Forces  
5 of the United States;

6 3. To conduct such investigations and make such reports as may  
7 be necessary to keep the ABLE Commission advised concerning any  
8 violations of the provisions of the Oklahoma Alcoholic Beverage  
9 Control Act and make orders for its enforcement;

10 4. To make recommendations to the ABLE Commission concerning  
11 the suspension or revocation of any licenses, the levying of fines  
12 against licensees for violations of the provisions of the Oklahoma  
13 Alcoholic Beverage Control Act or rules of the ABLE Commission or  
14 any action that should be filed or commenced against any official  
15 bond theretofore approved by the Director or the ABLE Commission;

16 5. To regularly inspect all places of business of licensees,  
17 and all other persons, firms or corporations dealing in the  
18 manufacture, distribution, transportation, sale or service of  
19 alcoholic beverages under the provisions of the Oklahoma Alcoholic  
20 Beverage Control Act and report to the ABLE Commission concerning  
21 any and all violations with a recommendation to the ABLE Commission  
22 for its determination;

1       ~~6. To refer any evidence of a violation of any provision of the~~  
2 ~~Oklahoma Alcoholic Beverage Control Act which carries a criminal~~  
3 ~~penalty to the appropriate law enforcement authority for action;~~

4       ~~7.~~ To aid the enforcement authorities of this state or any  
5 county or municipality of the state, or the federal government, in  
6 prosecutions of violations of the Oklahoma Alcoholic Beverage  
7 Control Act; and

8       ~~8.~~ 7. To enforce the provisions of the Prevention of Youth  
9 Access to Tobacco Act including but not limited to the levying of  
10 administrative fines against persons violating the provisions of the  
11 Prevention of Youth Access to Tobacco Act, and to at least annually  
12 conduct random unannounced inspections at locations where tobacco  
13 products are sold or distributed and conduct targeted inspections at  
14 those locations which have been in violation of the provisions of  
15 the Prevention of Youth Access to Tobacco Act.

16       B. The Director may employ or contract with attorneys, as  
17 needed, to advise the Director and the ABLE Commission on all legal  
18 matters and shall appear for and represent the Director and the ABLE  
19 Commission in all administrative hearings and all litigation or  
20 other proceedings which may arise in the discharge of their duties.  
21 At the request of the ABLE Commission, such attorneys shall assist  
22 district attorneys in prosecuting charges of violators of the  
23 Oklahoma Alcoholic Beverage Control Act.

SECTION 8. AMENDATORY Section 37, Chapter 366, O.S.L.

2016 (37A O.S. Supp. 2017, Section 2-125), is amended to read as follows:

Section 2-125. A bonded warehouse license shall authorize the holder thereof to receive and store alcoholic beverages and nonalcoholic beverages for the holders of storage licenses on the licensed premises of the bonded warehouse licensee. No goods, wares or merchandise other than alcoholic beverages may be stored in the same bonded warehouse with alcoholic beverages. The holder of a bonded warehouse license shall furnish and file with the ABLE Commission a bond running to all bailers of alcoholic beverages under proper storage licenses and their assignees (including mortgagees or other bona fide lienholders) conditioned upon faithful performance of the terms and conditions of such bailments.

SECTION 10. 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



1 in this state, or has not been a continuous resident of this state  
2 for the five (5) years next preceding the application for the  
3 license;

4 2. That the applicant is under twenty-one (21) years of age;

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

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

18 5. That the applicant or any partner has, within twelve (12)  
19 months next preceding the date of the application, violated any  
20 provision of the Oklahoma Alcoholic Beverage Control Act or rule of  
21 the ABLE Commission promulgated pursuant hereto. Provided, however,  
22 that if the ABLE Commission has, during such twelve-month period,  
23 suspended any license sought to be renewed, such renewal application  
24 may be approved if the term of the suspension has been completed and

1 the applicant has complied with any special conditions imposed in  
2 connection with the suspension;

3 6. That the applicant is not of good moral character, or that  
4 the applicant is in the habit of using alcoholic beverages to  
5 excess, or is mentally incapacitated. Provided, that the record in  
6 any municipal court showing a conviction of violation of any  
7 municipal ordinances or state statutes involving moral character or  
8 public nuisance obtained after passage and approval of the Oklahoma  
9 Alcoholic Beverage Control Act shall be received in evidence by the  
10 ABLE Commission;

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

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

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

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

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

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

3        13. That, in the case of an application for a wine and spirits  
4 wholesaler license or beer distributor license, any manufacturer,  
5 including an officer, director or principal stockholder thereof or  
6 any partner, has any financial interest in the business to be  
7 conducted under the license, unless otherwise permitted by law;

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

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

23       16. That, in the case of an application for a retail spirits,  
24 retail wine or retail beer license, the applicant or any partner is

1 the holder or partner of the holder, or employee of such holder of  
2 any other class of license issued under the provisions of the  
3 Oklahoma Alcoholic Beverage Control Act, other than a storage  
4 license or an employee license for the proposed licensed premises of  
5 the applicant; or

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

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

13 SECTION 11. AMENDATORY Section 60, Chapter 366, O.S.L.  
14 2016 (37A O.S. Supp. 2017, Section 2-148), is amended to read as  
15 follows:

16 Section 2-148. A. Any license issued pursuant to the  
17 provisions of the Oklahoma Alcoholic Beverage Control Act by the  
18 ABLE Commission, after due notice and hearing, may be revoked or  
19 suspended if the ABLE Commission finds or has grounds to believe  
20 that the licensee has:

- 21 1. Violated any rule promulgated by the ABLE Commission;
- 22 2. Procured a license through fraud, or misrepresentation, or  
23 concealment of a material fact;

1        3. Made any false representation or statement to the ABLE  
2 Commission or the Oklahoma Tax Commission in order to prevent or  
3 induce action by the ABLE Commission or the Tax Commission;

4        4. Maintained an unsanitary establishment or has supplied  
5 impure or otherwise deleterious beverages or food;

6        5. Stored, possessed, mixed or served on the premises of a  
7 bottle club any alcoholic beverage upon which the tax levied by  
8 Section ~~104~~ 5-101 of this ~~act~~ title has not been paid as provided  
9 for in the Oklahoma Alcoholic Beverage Control Act, in a county of  
10 this state where the sale of alcoholic beverages by the individual  
11 drink for on-premises consumption has not been authorized;

12       6. Misrepresented to a customer or the public any alcoholic  
13 beverage sold by the licensee;

14       7. Had any permit or license issued by the Tax Commission and  
15 required by the Oklahoma Alcoholic Beverage Control Act, suspended  
16 or revoked by the Tax Commission; or

17       8. Is not in compliance with the tax laws of this state as  
18 required in Article XXVIII A of the Oklahoma Constitution.

19       B. The ABLE Commission may revoke or suspend the license of any  
20 mixed beverage, caterer or bottle club licensee if the ABLE  
21 Commission finds or has grounds to believe that such licensee:

22       1. Has acted as an agent of a manufacturer or wholesaler of  
23 alcoholic beverages;

24       2. Is a manufacturer or wholesaler of alcoholic beverages;

1        3. Has borrowed money or property or accepted gratuities or  
2 rebates from a manufacturer or wholesaler of alcoholic beverages;

3        4. Has obtained the use of equipment from any manufacturer or  
4 wholesaler of alcoholic beverages or any agent thereof;

5        5. ~~Has violated any of the provisions of the Oklahoma Alcoholic~~  
6 ~~Beverage Control Act for which mandatory revocation or suspension is~~  
7 ~~not required;~~

8        ~~6.~~ Has been convicted within the past twenty-five (25) years,  
9 of a violation of any state or federal law relating to alcoholic  
10 beverage for which mandatory revocation or suspension is not  
11 required; or

12        ~~7.~~ 6. Is not in compliance with the tax laws of this state as  
13 required in Article XXVIII A of the Oklahoma Constitution.

14        C. The ABLE Commission may revoke or suspend the license of any  
15 retail, mixed beverage, caterer or bottle club licensee if the ABLE  
16 Commission finds or has grounds to believe that such licensee has  
17 borrowed money or property or accepted gratuities, discounts,  
18 rebates, free goods, allowances or other inducements from a wine and  
19 spirits wholesaler or beer distributor.

20        D. The ABLE Commission shall have the authority to revoke the  
21 license of any licensee if the ABLE Commission finds:

22        1. That the licensee knowingly sold alcoholic beverages or  
23 allowed such beverages to be sold, delivered or furnished to any  
24

1 person under the age of twenty-one (21) years or to any person  
2 visibly intoxicated or adjudged insane or mentally deficient;

3 2. That the licensee, any general or limited partner of the  
4 licensee, or in the case of a corporation, an officer or director of  
5 the corporation, has been convicted of a felony or is not in  
6 compliance with the tax laws of this state as required in Article  
7 XXVIII A of the Oklahoma Constitution;

8 3. That, in the case of a wine and spirits wholesaler, beer  
9 distributor, retail spirits, retail wine or retail beer licensee,  
10 the holder of the license or any member of a general or limited  
11 partnership which is the holder of such a license, has been  
12 convicted of a prohibitory law relating to the sale, manufacture or  
13 transportation of alcoholic beverages which constitutes a felony.

14 ~~E. If the ABLE Commission shall find by a preponderance of the~~  
15 ~~evidence as in civil cases that a licensee has knowingly sold any~~  
16 ~~alcoholic beverage to any person under the age of twenty-one (21)~~  
17 ~~years, after a public hearing, the ABLE Commission shall revoke such~~  
18 ~~license and no discretion as to the revocation shall be exercised by~~  
19 ~~the ABLE Commission.~~

20 ~~F.~~ The ABLE Commission shall have the authority to promulgate  
21 rules to establish a penalty schedule for violations of any  
22 provision of the Oklahoma Alcoholic Beverage Control Act or any rule  
23 of the ABLE Commission. The schedule shall provide for suspension  
24 or revocation of any license for major and minor violations as

1 determined by the ABLE Commission. Penalties shall be increasingly  
2 severe with each violation by a licensee.

3        Provided, that for a fourth major violation by a licensee within  
4 a twenty-four-month period, the penalty shall be mandatory  
5 revocation of license. The twenty-four-month period shall be  
6 calculated from the date of the most recent violation as set forth  
7 in an order signed by the Director or the designee of the Director.

8        ~~G.~~ F. The ABLE Commission or the Tax Commission may impose a  
9 monetary penalty in lieu of or in addition to suspension of a  
10 license. The amount of the fine for a major violation shall be  
11 computed by multiplying the proposed number of days of the  
12 suspension period by One Hundred Dollars (\$100.00). The amount of  
13 the fine for a minor violation shall be computed by multiplying the  
14 number of days of the proposed suspension period by Fifty Dollars  
15 (\$50.00).

16        ~~H.~~ G. The failure of any licensee to pay a fine or serve a  
17 suspension imposed by the ABLE Commission or the Tax Commission  
18 shall result in the revocation of the license of the licensee.

19        ~~I.~~ H. If the ABLE Commission or the Tax Commission finds that  
20 public health, safety or welfare require emergency action, and  
21 incorporates a finding to that effect in its order, summary  
22 suspension of a license may be ordered pending proceeding for  
23 revocation or other action, pursuant to the provisions of Section  
24 314 of Title 75 of the Oklahoma Statutes.



SECTION 12. AMENDATORY Section 78, Chapter 366, O.S.L. 2016, as amended by Section 14, Chapter 364, O.S.L. 2017 (37A O.S. Supp. 2017, Section 3-108), is amended to read as follows:

Section 3-108. A. The provisions of this section shall be in effect except as otherwise provided in Article XXVIII A of the Oklahoma Constitution.

B. Subject to the provisions of subsection D of this section, every ~~licensed~~ brewer or cider manufacturer authorized to sell its beer or cider in this state shall:

1. Enter into a distributor agreement with a licensed distributor, as defined herein, to sell the designated brands, including brand extensions, of the brewer or cider manufacturer. The agreement shall designate the sales territory of that licensed distributor and the designated brands to be sold by the licensed distributor. All such distributor agreements shall specifically authorize this sale of the designated brands by a licensed distributor within that sales territory. All such distributor agreements shall further provide that the licensed manufacturer who desires to sell a brand extension of a low-point beer in Oklahoma must assign the low-point beer brand extension to the licensed distributor to whom the licensed manufacturer granted the exclusive sales territory to the low-point beer brand from which the brand extension resulted;

1        2. Sell its registered and approved designated brands only to a  
2 licensed distributor with whom that brewer or cider manufacturer has  
3 a distributor agreement designating the sales territory of the  
4 licensed distributor and the designated brands to be sold by the  
5 licensed distributor;

6        3. Authorize only one licensed distributor for each designated  
7 sales territory. Such licensed distributor shall be the only  
8 licensed distributor for the designated brands of the authorizing  
9 brewer or cider manufacturer within that designated sales territory;  
10 and

11       4. Designate who is responsible for the distribution of its  
12 designated brands.

13       C. Subject to the provisions of subsection D of this section,  
14 any and all licensed distributors possessing the rights to  
15 distribute a low-point beer brand in a specific territory prior to  
16 the introduction of that low-point beer's correlating beer brand  
17 extension in that specific territory shall retain the right to  
18 distribute the low-point beer from which the brand extension  
19 resulted.

20       D. 1. No later than August 2, 2018, a brewer shall assign the  
21 exclusive right to distribute a beer brand, including brand  
22 extensions thereof, to the low-point beer distributor who was, prior  
23 to the effective date of this act, assigned the exclusive  
24 distribution rights to the low-point beer from which the brand

1 extension arose without charge or payment of compensation, unless  
2 the low-point beer distributor is, on the effective date of this  
3 act, a brewer of beer or low-point beer and has therefore been  
4 distributing low-point beer pursuant to a license to so distribute,  
5 subject to the provisions of subsection E of this section. This  
6 subsection shall not apply to a small brewer as defined in Section  
7 1-103 of this title.

8       2. With respect to brand extensions which arise after October  
9 1, 2018, the brewer or cider manufacturer shall assign the exclusive  
10 right to distribute the brand extension to the distributor who has  
11 been assigned the exclusive distribution rights to the beer or cider  
12 from which the brand extension arose, without charge or payment of  
13 compensation.

14       3. With respect to a brand of beer or cider which was, prior to  
15 April 15, 2017, distributed in this state only as strong beer or  
16 cider pursuant to the Alcoholic Beverage Control Act then in effect,  
17 if a low-point version of the brand is introduced after April 15,  
18 2017, no later than August 2, 2018, the brewer or cider manufacturer  
19 shall assign the exclusive rights to distribute the low-point  
20 version of the brand to the distributor who was, immediately prior  
21 to the introduction of the low-point version of the brand, assigned  
22 the exclusive distribution rights to the strong version of the brand  
23 without charge or payment of compensation.

1       4. No later than August 2, 2018, with respect to dual strength  
2 beer, the brewer thereof shall assign the exclusive right to  
3 distribute the brands represented by the dual strength beer to  
4 either the low-point beer distributor or the nonresident seller who  
5 had theretofore been assigned the exclusive distribution rights in  
6 the territory to either version of the dual strength beer; provided,  
7 however, whichever party is selected by the brewer must compensate  
8 the party that was not selected by the brewer for the loss of the  
9 distribution rights with respect to that particular territory.  
10 Whichever party is selected shall obtain the requisite distributor  
11 license and shall be subject to the provisions of this act.

12       5. Compensation for the purposes of this provision shall be the  
13 fair market value of the party losing its distribution rights with  
14 respect to the beer within that specific territory. Fair market  
15 value shall be determined as set forth in Section 3-111 of this  
16 title and shall take into account all aspects of brand valuation,  
17 including but not limited to:

- 18           a. the diminished value of the distribution of one  
19               version of beer as a consequence of the subsequent  
20               introduction of the other version,
- 21           b. the expected annual sales and earnings of the  
22               distributor agreement,
- 23           c. the length of time the existing distributor held in  
24               the distribution sales agreement, and

1           d.    any other relevant items of value, such as goodwill  
2                   and going concern.

3           E.   If a brewer, whether directly or through an affiliate,  
4 maintained one or more licenses to distribute low-point beer in this  
5 state prior to the effective date of this act, then up to two of the  
6 brewer's low-point beer distribution licenses shall automatically  
7 convert to beer distribution licenses upon the effective date of  
8 this act, and such brewer shall be permitted to continue to  
9 distribute beer in two territories within which it currently  
10 distributes without the appointment of a distributor for such period  
11 of time as determined by the Legislature and consistent with the  
12 Constitution of the State of Oklahoma; provided however, it shall  
13 not be permitted to distribute beer outside of the territory unless  
14 it enters into a distributor agreement with an independent licensed  
15 distributor as provided in paragraph 1 of subsection B of this  
16 section. This section shall not apply to small brewers that have  
17 elected to self-distribute.

18           SECTION 14.        AMENDATORY        Section 85, Chapter 366, O.S.L.  
19 2016 (37A O.S. Supp. 2017, Section 3-115), is amended to read as  
20 follows:

21           Section 3-115. To assure and control quality, a brewer, beer  
22 distributor or a holder of a small brewer self-distribution license  
23 or brewpub self-distribution license, ~~at the time of a regular~~  
24 ~~delivery,~~ may withdraw ~~with the permission of the retailer,~~ a

1 quantity of beer in undamaged original packaging from the retailer's  
2 stock if:

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

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

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

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

21 SECTION 15. AMENDATORY Section 88, Chapter 366, O.S.L.  
22 2016 (37A O.S. Supp. 2017, Section 3-118), is amended to read as  
23 follows:  
24

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

6       1. Where seasonable merchandise is sold in bona fide clearance  
7 sales, if advertised, marked and sold as such;

8       2. Where merchandise is imperfect or damaged or is being  
9 discontinued and is advertised, marked and sold as such;

10       3. Where merchandise is sold upon the final liquidation of any  
11 business;

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

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

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

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

19       SECTION 16.       AMENDATORY       Section 93, Chapter 366, O.S.L.  
20 2016 (37A O.S. Supp. 2017, Section 3-123), is amended to read as  
21 follows:

22       Section 3-123. A. It shall be unlawful for any person  
23 privileged to sell alcoholic beverages to wholesalers or retailers:  
24

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

7        2. To grant, directly or indirectly, any discount, rebate, free  
8 goods, allowance, instantly redeemable coupon or other inducement  
9 except the following:

10        a. mail-in rebates for alcoholic beverages and  
11        nonalcoholic beverage merchandise items funded by the  
12        manufacturer and redeemed by the manufacturer, either  
13        by itself or through a third-party fulfillment  
14        company, for a discount or rebate on the alcoholic  
15        beverage and nonalcoholic beverage merchandise item,  
16        or

17        b. food and beverages provided by the manufacturer,  
18        distributor or wholesaler to the retailer for  
19        immediate consumption:

20        (1) at a meeting at which the primary purpose is the  
21        discussion of business,

22        (2) at a convention when the food and beverages are  
23        offered to all participants, or  
24



1                   (3) at a sports or entertainment event that the  
2                   manufacturer, distributor or wholesaler attends  
3                   with the retailer.

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

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

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

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

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

22           D. Nothing in this section shall prohibit any person privileged  
23 to sell alcoholic beverages to wholesalers or retailers from  
24 furnishing point-of-sale and point-of-purchase advertising material

1 to retail licensees without charge. Further, manufacturers,  
2 brewers, nonresident sellers, wholesalers, beer distributors, small  
3 brewer self-distributors and brewpub self-distributors shall be  
4 permitted to engage in the following activities:

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

- 14 a. as necessary to perform the reset and rearrangement of  
15 the products of the manufacturer, brewer, nonresident  
16 seller, wholesaler, beer distributor, small brewer  
17 self-distributor or brewpub self-distributor  
18 performing such reset and rearrangement, or  
19 b. to execute a retailer-chosen shelf plan or schematic  
20 for products of a competitor that is unwilling or  
21 unavailable to reset its product upon notice from the  
22 retail licensee;

23 2. With permission of and at the direction of the retail  
24 licensee, organize and construct displays of alcoholic beverages

1 that such manufacturer, brewer, nonresident seller, wholesaler, beer  
2 distributor, small brewer self-distributor or brewpub self-  
3 distributor manufactured or sold, directly or indirectly, to the  
4 retail licensee, provided that:

5       a. such displays are accessible to the consumer, and

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

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

20       4. Withdraw a quantity of beer in undamaged original packaging  
21 from such retail licensee's stock, provided that that such  
22 manufacturer, brewer, nonresident seller, beer distributor, small  
23 brewer self-distributor or brewpub self-distributor manufactured or  
24 sold such beer, directly or indirectly, to the retail licensee and

1 such removal is otherwise permitted under Section 3-115 of this  
2 title; and

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

6 SECTION 17. AMENDATORY Section 98, Chapter 366, O.S.L.  
7 2016 (37A O.S. Supp. 2017, Section 4-101), is amended to read as  
8 follows:

9 Section 4-101. A. Municipalities are authorized to enact  
10 ordinances consistent with the provisions of the Oklahoma Alcoholic  
11 Beverage Control Act; provided, municipalities may not enact  
12 ordinances criminalizing conduct that may be prosecuted  
13 administratively by the ABLE Commission. In municipalities with  
14 populations of thirty-five thousand (35,000) or more according to  
15 the most recent federal decennial census, these ordinances may  
16 provide for maximum penalties of fines not to exceed One Thousand  
17 Dollars (\$1,000.00) plus court costs, an imprisonment not to exceed  
18 ninety (90) days, or both such fine and imprisonment.

19 B. All municipalities of this state may enact ordinances  
20 prohibiting or regulating nudity or drink solicitation in  
21 establishments licensed pursuant to the provisions of the Oklahoma  
22 Alcoholic Beverage Control Act.

23 C. The provisions of this section shall not authorize any  
24 municipality to regulate by ordinance or issue any licenses for

1 activities for which a license is required to be issued pursuant to  
2 the provisions of the Oklahoma Alcoholic Beverage Control Act.

3 SECTION 18. AMENDATORY Section 135, Chapter 366, O.S.L.  
4 2016, as amended by Section 23, Chapter 364, O.S.L. 2017 (37A O.S.  
5 Supp. 2017, Section 5-132), is amended to read as follows:

6 Section 5-132. A. Except as provided in subsection D of this  
7 section, no alcoholic beverage shall be labeled, offered or  
8 advertised for sale in this state unless in accordance with rules  
9 promulgated pursuant to the provisions of Section 5-130 of this  
10 title and unless the brand label shall have been registered with and  
11 approved by the ABLE Commission and the appropriate fee paid as  
12 provided for in this section.

13 B. An application for registration of a brand label shall be  
14 filed by and fees paid by the manufacturer or brewer of the brand if  
15 the manufacturer or brewer is licensed by the ABLE Commission;  
16 however, if the manufacturer is represented by a manufacturer's  
17 agent, licensed nonresident seller, wine and spirits wholesaler or  
18 beer distributor, then the manufacturer's agent, nonresident seller,  
19 wine and spirits wholesaler or beer distributor shall submit each  
20 label for each product the manufacturer offers for sale in this  
21 state, along with payment of the brand registration fee; provided,  
22 the manufacturer or brewer must fully reimburse the manufacturer's  
23 agent, licensed nonresident seller, wine and spirits wholesaler or  
24 beer distributor for the cost of the brand registration fee within

1 forty-five (45) days of the time the original brand registration fee  
2 is paid. Cordials and wines which differ only as to age or vintage  
3 year, as defined by such rules, shall be considered the same brand,  
4 and those that differ as to type or class may be considered the same  
5 brand by the ABLE Commission where consistent with the purposes of  
6 this section.

7 C. The application for registration of a brand label shall be  
8 filed on a form prescribed by the ABLE Commission, and shall contain  
9 such information as the ABLE Commission shall require. Such  
10 application shall be accompanied by a certified check, bank  
11 officers' check or draft or money order in the amount of the annual  
12 registration fee, or the properly prorated portion thereof  
13 prescribed by this section.

14 D. 1. The annual fee for registration of any brand label for  
15 spirits shall be Three Hundred Seventy-five Dollars (\$375.00). The  
16 annual fee for registration of any brand label for beer shall be Two  
17 Hundred Dollars (\$200.00). The annual fee for registration of any  
18 brand label for wine made in the United States, or for registration  
19 of any category of imported wine as defined by the Tax Commission,  
20 shall be Two Hundred Dollars (\$200.00). Beer manufactured in this  
21 state shall be exempt from brand label registration fees.

22 2. Each brand label registered and approved pursuant to this  
23 section shall be valid for a term of up to one (1) year, expiring on  
24 the June 30 next following registration, and may be renewed for

1 subsequent terms of one (1) year beginning on the July 1 following  
2 the initial registration. Brand registration fees for labels  
3 registered after July 1 may be prorated through the following June  
4 30 on a quarterly basis. The brand registration fee shall not be  
5 transferable unless otherwise allowed by law. A nonresident seller  
6 may transfer brand registrations to the brewer, distiller or winery  
7 that produces those brands, provided the brewer, distiller or winery  
8 has obtained a license at no expense to the nonresident seller,  
9 brewer, distiller or winery.

10 E. If the ABLE Commission shall deny the application for  
11 registration of a brand label, it shall return the registration fee  
12 to the applicant, less twenty-five percent (25%) of such fee.

13 F. The ABLE Commission may at any time exempt any discontinued  
14 brand from fee provisions of this section where a manufacturer or  
15 wholesaler has an inventory of one hundred cases or less of liquor  
16 or wine and five hundred cases or less of beer, and certifies to the  
17 ABLE Commission in writing that such brand is being discontinued.

18 G. No private labels or control labels shall be approved for  
19 sale in this state.

20 SECTION 19. AMENDATORY Section 141, Chapter 366, O.S.L.  
21 2016 (37A O.S. Supp. 2017, Section 6-101), is amended to read as  
22 follows:

23 Section 6-101. A. No person shall:  
24

- 1        1. Knowingly sell, deliver or furnish alcoholic beverages to  
2 any person under twenty-one (21) years of age;
- 3        2. Sell, deliver or knowingly furnish alcoholic beverages to an  
4 intoxicated person or to any person who has been adjudged insane or  
5 mentally deficient;
- 6        3. Open a retail container or consume alcoholic beverages on  
7 the premises of a package store, grocery store, convenience store or  
8 drug store, unless otherwise permitted by law;
- 9        4. Import into this state, except as provided for in the  
10 Oklahoma Alcoholic Beverage Control Act, any alcoholic beverages;  
11 provided, that nothing herein shall prohibit the importation or  
12 possession for personal use of not more than one (1) liter of  
13 alcoholic beverages upon which the Oklahoma excise tax is  
14 delinquent;
- 15        5. Receive, possess or use any alcoholic beverage in violation  
16 of the provisions of the Oklahoma Alcoholic Beverage Control Act;
- 17        6. Transport into, within or through this state more than one  
18 (1) liter of alcoholic beverages upon which the Oklahoma excise tax  
19 has not been paid unless the person accompanying or in charge of the  
20 vehicle transporting same shall possess a true copy of a bill of  
21 lading, invoice, manifest or other document particularly identifying  
22 the alcoholic beverages being transported and showing the name and  
23 address of the consignor and consignee; provided, this prohibition  
24 shall not apply to the first one hundred eighty (180) liters of



1 alcoholic beverages classified as household goods by military  
2 personnel, age twenty-one (21) or older, when entering Oklahoma from  
3 temporary active assignment outside the contiguous United States;

4 7. Knowingly transport in any vehicle upon a public highway,  
5 street or alley any alcoholic beverage except in the original  
6 container which shall not have been opened and the seal upon which  
7 shall not have been broken and from which the original cap or cork  
8 shall not have been removed, unless the opened container be in the  
9 rear trunk or rear compartment, which shall include the spare tire  
10 compartment in a vehicle commonly known as a station wagon and panel  
11 truck, or any outside compartment which is not accessible to the  
12 driver or any other person in the vehicle while it is in motion;

13 8. Consume spirits, wine or beer in public except on the  
14 premises of a licensee of the ABLE Commission who is authorized to  
15 sell or serve spirits by the individual drink, or unless otherwise  
16 permitted by law. No person shall be intoxicated in a public place.  
17 This provision shall be cumulative and in addition to existing law;

18 9. Forcibly resist lawful arrest, or by physical contact  
19 interfere with an investigation of any infringement of the Oklahoma  
20 Alcoholic Beverage Control Act or with any lawful search or seizure  
21 being made by a law enforcement officer or an employee of the ABLE  
22 Commission, when such person knows or should know that such acts are  
23 being performed by a state, county or municipal officer or employee  
24 of the ABLE Commission;

1        10. Manufacture, duplicate, counterfeit or in any way imitate  
2 any bottle club membership card required to be issued by the ABLE  
3 Commission without the permission of the ABLE Commission;

4        11. Consume or possess alcoholic beverages on the licensed  
5 premises of a bottle club unless such person possesses a valid  
6 membership card for that club issued by the club;

7        12. Knowingly possess any bottle club membership card required  
8 to be issued by the ABLE Commission which has been manufactured,  
9 counterfeited, imitated or in any way duplicated without the  
10 permission of the ABLE Commission; or

11       13. Knowingly and willfully permit any individual under twenty-  
12 one (21) years of age who is an invitee to the person's residence,  
13 any building, structure or room owned, occupied, leased or otherwise  
14 procured by the person or on any land owned, occupied, leased or  
15 otherwise procured by the person, to possess or consume any  
16 alcoholic beverage as defined by Section ~~3~~ 1-103 of this ~~act~~ title,  
17 any controlled dangerous substance as defined in the Uniform  
18 Controlled Dangerous Substances Act, or any combination thereof, in  
19 such place.

20       B. Except as provided for in subsection C of this section,  
21 punishment for violation of paragraph 13 of subsection A of this  
22 section shall be as follows:

23       1. Any person who is convicted of a violation of the provisions  
24 of paragraph 13 of subsection A of this section shall be deemed

1 guilty of a misdemeanor for the first offense and be punished by a  
2 fine of not more than Five Hundred Dollars (\$500.00);

3 2. Any person who, within ten (10) years after previous  
4 convictions of a violation:

- 5 a. of paragraph 13 of subsection A of this section,
- 6 b. of the provisions of any law of another state  
7 prohibiting the offense provided for in paragraph 13  
8 of subsection A of this section, or
- 9 c. in a municipal criminal court of record for the  
10 violation of a municipal ordinance prohibiting the  
11 offense provided for in paragraph 13 of subsection A  
12 of this section,

13 shall be guilty of a misdemeanor and shall be punished by a fine of  
14 not more than One Thousand Dollars (\$1,000.00);

15 3. Any person who, within ten (10) years after two or more  
16 previous convictions of a violation:

- 17 a. of paragraph 13 of subsection A of this section,
- 18 b. of the provisions of any law of another state  
19 prohibiting the offense provided for in paragraph 13  
20 of subsection A of this section, or
- 21 c. in a municipal criminal court of record for the  
22 violation of a municipal ordinance prohibiting the  
23 offense provided for in paragraph 13 of subsection A  
24 of this section, or

1           d.    or any combination of two or more thereof,  
2 shall be guilty of a felony and shall be punished by a fine of not  
3 more than Two Thousand Five Hundred Dollars (\$2,500.00), or by  
4 imprisonment in the custody of the Department of Corrections for not  
5 more than five (5) years, or by both such fine and imprisonment.

6           C. Any person who violates paragraph 13 of subsection A of  
7 this section, and such actions cause great bodily injury or the  
8 death of a person, shall, in addition to any other penalty provided  
9 by law, be guilty of a felony, punishable by imprisonment in the  
10 custody of the Department of Corrections for not more than five (5)  
11 years, a fine of not less than Two Thousand Five Hundred Dollars  
12 (\$2,500.00) nor more than Five Thousand Dollars (\$5,000.00), or both  
13 such fine and imprisonment.

14           D. Except as provided in subsection C of Section ~~166~~ 6-126 of  
15 this ~~act~~ title, any person who shall engage in any of the following  
16 and disturb the peace of any person:

17           1. In any public place, or in or upon any passenger coach,  
18 streetcar, or in or upon any other vehicle commonly used for the  
19 transportation of passengers, or in or about any depot, platform,  
20 waiting station or room, drink or otherwise consume any intoxicating  
21 liquor unless authorized by this act, intoxicating substance or  
22 intoxicating compound of any kind, or inhale glue, paint or other  
23 intoxicating substance;

1        2. Be drunk or intoxicated in any public or private road, or in  
2 any passenger coach, streetcar or any public place or building, or  
3 at any public gathering, from drinking or consuming such  
4 intoxicating liquor, intoxicating substance or intoxicating compound  
5 or from inhalation of glue, paint or other intoxicating substance;  
6 or

7        3. Be drunk or intoxicated from any cause,  
8 shall be guilty of a misdemeanor, and upon conviction thereof  
9 shall be punished by a fine of not less than Ten Dollars (\$10.00),  
10 nor more than One Hundred Dollars (\$100.00) or by imprisonment for  
11 not less than five (5) days nor more than thirty (30) days or by  
12 both such fine and imprisonment.

13        SECTION 20.        AMENDATORY        Section 145, Chapter 366, O.S.L.  
14 2016, as amended by Section 2, Chapter 366, O.S.L. 2017 (37A O.S.  
15 Supp. 2017, Section 6-105), is amended to read as follows:

16        Section 6-105. No mixed beverage, public event, special event  
17 or on-premises beer and wine licensee shall:

18        1. Purchase or receive any alcoholic beverage other than from a  
19 person holding a wine and spirit wholesaler or beer distributor  
20 license issued pursuant to the Oklahoma Alcoholic Beverage Control  
21 Act; provided, a mixed beverage or on-premises beer and wine  
22 licensee whose premises are a restaurant may purchase wine produced  
23 at wineries in this state directly from a winemaker as provided in  
24 Section 2 of Article XXVIII A of the Oklahoma Constitution;

1       2. Transport alcoholic beverages from the place of purchase to  
2 the licensed premises unless the licensee also holds a private  
3 carrier license issued by the ABLE Commission;

4       3. Use or allow the use of any mark or label on a container of  
5 alcoholic beverage which is kept for sale which does not clearly and  
6 precisely indicate the nature of the contents or which might deceive  
7 or conceal the nature, composition, quantity, age or quality of such  
8 beverage;

9       4. Keep or knowingly permit any alcoholic beverage to be kept,  
10 brought or consumed on the licensed premises which is not allowed to  
11 be sold or served upon such premises; or

12       5. Allow any person under twenty-one (21) years of age to enter  
13 into, remain within or loiter about the designated bar area of the  
14 licensed premises, except for persons who incidentally pass through  
15 the designated area.

16       The prohibition in this subsection against persons under twenty-  
17 one (21) years of age entering or remaining within the designated  
18 bar area of the licensed premises shall not apply:

- 19           a. if the licensed premises are closed to the public  
20               during a time the premises are legally permitted to be  
21               open for business and the premises are used for a  
22               private party at which alcoholic beverages may be  
23               served to persons twenty-one (21) years of age or  
24               older. Any alcoholic beverages served at a private

1 party on the licensed premises may be purchased from  
2 the licensee at a negotiated price or purchased  
3 privately and served at the private party on the  
4 licensed premises. Any licensee who desires to  
5 conduct such a private party shall notify the ABLE  
6 Commission, in writing, at least ten (10) calendar  
7 days prior to the private party. The notification  
8 shall include the date, time and purpose of the  
9 private party and any other information the ABLE  
10 Commission may deem necessary, or

- 11 b. to a designated bar area which is a concessions stand  
12 serving beer ~~and~~, wine or spirits, in addition to food  
13 and non-alcoholic beverages, which concession stand is  
14 located at, in, or on the premises of a sports, music  
15 or entertainment venue, convention center, fairgrounds  
16 or similar facility."

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