

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 1542, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Bice

Bice-CD-FS-Req#3538
3/14/2018 5:48 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

FLOOR SUBSTITUTE
FOR

SENATE BILL NO. 1542

By: Bice of the Senate

and

Kannady of the House

FLOOR SUBSTITUTE

An Act relating to alcoholic beverages; amending Sections 2, 4, as amended by Section 9, Chapter 364, O.S.L. 2017, 13, as amended by Section 10, Chapter 364, O.S.L. 2017, 32, 33, 48 and 80, Chapter 366, O.S.L. 2016, as amended by Section 15, Chapter 364, O.S.L. 2017, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2017, Sections 1-102, 1-104, 2-101, 2-120, 2-121, 2-136 and 3-110), which relate to the Alcoholic Beverage Control Act; modifying policy and scope of act; modifying authority of certain wine and spirits wholesalers; changing expiration date of certain licenses; modifying persons not required to obtain certain license; modifying unlawful act; removing requirement for certain person to operate certain conveyance; providing effective dates; and declaring an emergency.

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

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

1 Section 1-102. A. The purpose of the Oklahoma Alcoholic
2 Beverage Control Act is to implement the provisions of Article
3 XVIIIIA of the Oklahoma Constitution, as referred to the people for
4 their approval or rejection by the Secretary of State pursuant to
5 the provisions of Enrolled Senate Joint Resolution No. 68 of the 2nd
6 Session of the 55th Oklahoma Legislature. The Legislature hereby
7 declares that the Oklahoma Alcoholic Beverage Control Act is deemed
8 to be a code, digest or revision of statutes pursuant to the
9 provisions of Section 57 of Article V of the Oklahoma Constitution.

10 B. All alcoholic beverages as herein defined except alcohol
11 produced for use as a motor fuel under a permit issued by the
12 Oklahoma State Department of Agriculture, Food, and Forestry shall
13 be subject to the provisions of the Oklahoma Alcoholic Beverage
14 Control Act.

15 C. The Legislature finds and declares that:

16 1. The state has a substantial interest in exercising its
17 powers and the powers granted to the states by the Twenty-first
18 Amendment to the Constitution of the United States and in regulating
19 the structure of the state's alcoholic beverage industry including
20 the activities of manufacturers, importers, wholesalers and
21 retailers, the methods by which alcoholic beverages are marketed,
22 and influences that affect the consumption levels of alcoholic
23 beverages by the people of the state;
24

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

5 3. Changes in market dynamics and advances in technology may
6 have altered the way the alcoholic beverage industry operates, but
7 have not changed the state's desire for strict regulation of the
8 manufacture, importation, distribution, marketing and sale of
9 alcoholic beverages in accordance with the Oklahoma State
10 Constitution and laws and regulations enacted by the Legislature and
11 the Oklahoma Alcoholic Beverage Laws Enforcement Commission. Such
12 regulation advances the interest of the state in ensuring a
13 competitive and orderly market in the distribution and sale of
14 alcoholic beverages, promoting temperance in the use and consumption
15 of alcoholic beverages, and facilitating the collection of excise
16 taxes and fees. The purpose of the state's regulatory system is to
17 promote these interests by requiring economic separation between the
18 tiers that contributes to a fair, open and competitive market
19 resulting in interbrand and other competition within each tier, and
20 prevents disorderly market conditions, including but not limited to
21 the domination of local markets and the undue influence of one tier
22 over another. This purpose is through any direct or indirect
23 ownership interest, or any other financial or business obligation;
24

1 4. The state maintains an interest in the promotion of
2 temperance as a paramount public health, safety and welfare concern.
3 The Legislature further reaffirms that temperance is achieved,
4 consistent with structural regulation that promotes a competitive
5 and orderly market, by controlled access to, and responsible use and
6 consumption of, alcoholic beverages by persons of legal drinking
7 age; and

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

11 SECTION 2. AMENDATORY Section 4, Chapter 366, O.S.L.
12 2016, as amended by Section 9, Chapter 364, O.S.L. 2017 (37A O.S.
13 Supp. 2017, Section 1-104), is amended to read as follows:

14 Section 1-104. A. The Alcoholic Beverage Laws Enforcement
15 Commission created in Section 1 of Article XXVIII of the Oklahoma
16 Constitution is hereby re-created. The purpose of the Commission
17 shall be to enforce the alcoholic beverage laws of the state, and
18 the Commission shall have such power and authority to enforce such
19 laws, rules and regulations as shall be prescribed by the Oklahoma
20 Alcoholic Beverage Control Act.

21 B. The Commission shall consist of seven (7) members, to be
22 appointed by the Governor with the advice and consent of the State
23 Senate; provided, members serving on October 1, 2017, shall continue
24 to serve until such time as their terms would have expired pursuant

1 to the provisions of Section 1 of Article XXVIII of the Oklahoma
2 Constitution. Five of the members shall be at-large members
3 representing the lay citizenry. The remaining two members shall be
4 persons with law enforcement experience in this state. Any time
5 there is a vacancy on the Commission, the Governor shall appoint a
6 replacement, with the advice and consent of the State Senate, within
7 ninety (90) days.

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

10 D. No more than four members of the Commission shall be
11 appointed from the same political party. No more than two members
12 of the Commission shall be appointed from the same federal
13 congressional district.

14 E. No member of the Commission shall hold any license
15 authorized by the Oklahoma Alcoholic Beverage Control Act, or have
16 any interest in any capacity, in the manufacture, sale, distribution
17 or transportation of alcoholic beverages.

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

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

22 H. The State of Oklahoma shall take all necessary steps to
23 ensure the timely implementation of Enrolled Senate Joint Resolution
24 No. 68 of the 2nd Session of the 55th Oklahoma Legislature, if

1 approved by the voters. Consistent with this objective, the ABLE
2 Commission shall have the power to issue interim licenses prior to
3 October 1, 2018, as follows:

4 1. Except for the sale of wine or beer to the public, an
5 interim license shall allow all qualified retail wine and retail
6 beer licensees to perform all activities permissible under a full
7 license including but not limited to purchasing, stocking and
8 storing the wine and/or full-strength beer prior to October 1, 2018.
9 In order to qualify for an interim license, the licensee must
10 satisfy all the requirements set forth in Article XXVIII A of the
11 Oklahoma Constitution and this act. ~~The~~ This interim license shall
12 convert to a full license on October 1, 2018;

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

17 3. An interim license shall allow all qualified wine and
18 spirits wholesalers and beer distributors to perform all activities
19 permissible under a full license including but not limited to
20 selling and delivering wine and/or full-strength beer to all
21 qualified retail wine and retail beer licensees. A wine and spirits
22 wholesaler that has been designated by a manufacturer as the
23 exclusive distributor of its wine or spirits may post those
24 designated products by line-item, consistent with Section 3-116.2 of

1 this title, on September 15, 2018, for sale effective October 1,
2 2018. In order to qualify for an interim license, the wine and
3 spirits wholesaler and beer distributor must comply with the
4 provisions set forth in Article XXVIII A of the Oklahoma Constitution
5 and this act. The interim license shall convert to a full license
6 on October 1, 2018.

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

- 10 a. such sales may begin no sooner than September 1, 2018,
- 11 b. the beer distributor either must be assigned a beer
12 distributor territory by the manufacturer pursuant to
13 a distributor agreement to begin October 1, 2018, or
14 be a brewer or an affiliate of a brewer that will be
15 permitted to distribute beer within two territories
16 pursuant to the provisions of subsection E of Section
17 3-108 of the this title, and
- 18 c. the interim license only permits sales to retailers by
19 the interim licensee either in the distribution
20 territory as set forth in the distributor agreement or
21 in the two territories permitted pursuant to the
22 provisions of subsection E of Section 3-108 of this
23 title.

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

7 SECTION 3. AMENDATORY Section 13, Chapter 366, O.S.L.
8 2016, as amended by Section 10, Chapter 364, O.S.L. 2017 (37A O.S.
9 Supp. 2017, Section 2-101), is amended to read as follows:

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

- | | | |
|----|---|------------|
| 13 | 1. Brewer License..... | \$1,250.00 |
| 14 | 2. Small Brewer License..... | \$125.00 |
| 15 | 3. Distiller License..... | \$3,125.00 |
| 16 | 4. Winemaker License..... | \$625.00 |
| 17 | 5. Small Farm Winery License..... | \$75.00 |
| 18 | 6. Rectifier License..... | \$3,125.00 |
| 19 | 7. Wine and Spirits Wholesaler License..... | \$3,000.00 |
| 20 | 8. Beer Distributor License..... | \$750.00 |

21 9. The following retail spirits license fees shall be
22 determined by the latest Federal Decennial Census:

- | | | |
|----|---|----------|
| 23 | a. Retail Spirits License for cities and towns from 200 | |
| 24 | to 2,500 population..... | \$305.00 |

1	b.	Retail Spirits License for cities and towns from 2,501	
2		to 5,000 population.....	\$605.00
3	c.	Retail Spirits License for cities and towns over 5,000	
4		population.....	\$905.00
5	10.	Retail Wine License.....	\$1,000.00
6	11.	Retail Beer License.....	\$500.00
7	12.	Mixed Beverage License.....	\$1,005.00
8		(initial license)	
9			\$905.00
10		(renewal)	
11	13.	Mixed Beverage/Caterer Combination License.....	\$1,250.00
12	14.	On Premises Beer and Wine License.....	\$500.00
13		(initial license)	
14			\$450.00
15		(renewal)	
16	15.	Bottle Club License.....	\$1,000.00
17		(initial license)	
18			\$900.00
19		(renewal)	
20	16.	Caterer License.....	\$1,005.00
21		(initial license)	
22			\$905.00
23		(renewal)	
24	17.	Annual Special Event License.....	\$55.00

1	18.	Quarterly Special Event License.....	\$55.00
2	19.	Hotel Beverage License.....	\$1,005.00
3		(initial license)	
4			\$905.00
5		(renewal)	
6	20.	Airline/Railroad Beverage License.....	\$1,005.00
7		(initial license)	
8			\$905.00
9		(renewal)	
10	21.	Agent License.....	\$55.00
11	22.	Employee License.....	\$30.00
12	23.	Industrial License.....	\$23.00
13	24.	Carrier License.....	\$23.00
14	25.	Private Carrier License.....	\$23.00
15	26.	Bonded Warehouse License.....	\$190.00
16	27.	Storage License.....	\$23.00
17	28.	Nonresident, Seller License or Manufacturer's	
18		License.....	\$750.00
19	29.	Manufacturer's Agent License.....	\$55.00
20	30.	Sacramental Wine Supplier License.....	\$100.00
21	31.	Charitable Auction License.....	\$1.00
22	32.	Charitable Alcoholic Beverage License.....	\$55.00
23	33.	Winemaker Self-Distribution License.....	\$750.00
24	34.	Annual Public Event License.....	\$1,005.00

1	35. One-Time Public Event License.....	\$255.00
2	36. Small Brewer Self-Distribution License.....	\$750.00
3	37. Brewpub License.....	\$1,005.00
4	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.

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

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

1. The license fee for a mixed beverage or bottle club license for those service organizations or fraternal beneficiary societies which are exempt under Section 501(c)(19), (8) or (10) of the

1 Internal Revenue Code shall be Five Hundred Dollars (\$500.00) per
2 year; and

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

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

8 E. All licenses, except as otherwise provided, shall be valid
9 for one (1) year from date of issuance unless revoked or
10 surrendered. Provided, all employee licenses shall be valid for two
11 (2) years and all other licenses issued by the ABLE Commission prior
12 to October 1, 2018, with a one-year term shall be valid initially
13 from the date of issue until the earlier of the twentieth month
14 following the date of issue or December 31, 2019, and, if such
15 license is renewed, shall thereafter be treated as if issued on such
16 earlier date and subject to annual renewal on each anniversary of
17 such date.

18 F. The holder of a license, issued by the ABLE Commission, for
19 a bottle club located in a county of this state where the sale of
20 alcoholic beverages by the individual drink for on-premises
21 consumption has been authorized, may exchange the bottle club
22 license for a mixed beverage license or an on-premises beer and wine
23 license and operate the licensed premises as a mixed beverage
24 establishment or an on-premises beer and wine establishment subject

1 to the provisions of the Oklahoma Alcoholic Beverage Control Act.
2 There shall be no additional fee for such exchange and the mixed
3 beverage license or on-premises beer and wine license issued shall
4 expire one (1) year from the date of issuance of the original bottle
5 club license.

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

- | | | |
|----|---|------------|
| 8 | 1. Nonresident Seller or Manufacturer License..... | \$2,500.00 |
| 9 | 2. Wine and Spirits Wholesaler License..... | \$2,500.00 |
| 10 | 3. Beer Distributor..... | \$1,000.00 |
| 11 | 4. Retail Spirits License for cities and towns | |
| 12 | over 5,000 population..... | \$250.00 |
| 13 | 5. Retail Spirits License for cities and towns | |
| 14 | from 2,501 to 5,000 population..... | \$200.00 |
| 15 | 6. Retail Spirits License for cities and towns | |
| 16 | from 200 to 2,500 population..... | \$150.00 |
| 17 | 7. Retail Wine License..... | \$250.00 |
| 18 | 8. Retail Beer License..... | \$250.00 |
| 19 | 9. Mixed Beverage License..... | \$25.00 |
| 20 | 10. Mixed Beverage/Caterer Combination License..... | \$25.00 |
| 21 | 11. Caterer License..... | \$25.00 |
| 22 | 12. On-Premises Beer and Wine License..... | \$25.00 |
| 23 | 13. Annual Public Event License..... | \$25.00 |
| 24 | 14. Small Farm Winery License..... | \$25.00 |

1 15. Small Brewer License..... \$35.00

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

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

12 SECTION 4. AMENDATORY Section 32, Chapter 366, O.S.L.
13 2016 (37A O.S. Supp. 2017, Section 2-120), is amended to read as
14 follows:

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

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

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

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

7 SECTION 5. AMENDATORY Section 33, Chapter 366, O.S.L.
8 2016 (37A O.S. Supp. 2017, Section 2-121), is amended to read as
9 follows:

10 Section 2-121. An employee license shall authorize the holder
11 thereof to work in a licensed package store, retail spirits, retail
12 wine or retail beer establishment, brewpub, mixed beverage
13 establishment, beer and wine establishment, bottle club, public
14 event or any establishment where alcohol or alcoholic beverages are
15 sold, mixed or served. Persons employed by a mixed beverage, on-
16 premises beer and wine, retail wine, retail beer, public event or a
17 bottle club licensee who do not participate in the service, mixing
18 or sale of mixed beverages shall not be required to have an employee
19 license. Provided, however, that a manager employed by a mixed
20 beverage licensee, public event licensee or a bottle club shall be
21 required to have an employee license whether or not the manager
22 participates in the service, mixing or sale of mixed beverages.
23 Applicants for an employee license must be at least eighteen (18)
24 years of age and have a health card issued by the county in which

1 they are employed, if the county issues such a card; provided, the
2 provisions of this section shall not be construed to permit any
3 person under twenty-one (21) years of age to be employed to sell
4 spirits. Employees of a special event, caterer, unless catering a
5 mixed beverage-licensed premise or airline/railroad beverage
6 licensees shall not be required to obtain an employee license, and
7 employees of beer distributors and other licensees holding licenses
8 issued by the ABLE Commission shall not be required to obtain an
9 employee license if such employee only sells alcohol or alcoholic
10 beverages to establishments holding licenses issued by the ABLE
11 Commission and not to the public. Persons employed by a hotel
12 licensee who participate in the stocking of hotel room mini-bars or
13 in the handling of alcoholic beverages to be placed in such devices
14 shall be required to have an employee license. As a prerequisite to
15 the issuance of an employee license, the applicant shall be required
16 to have successfully completed a training program conducted by the
17 ABLE Commission, or by another entity approved by the ABLE
18 Commission, including an in-house training program conducted by the
19 employer.

20 SECTION 6. AMENDATORY Section 48, Chapter 366, O.S.L.
21 2016 (37A O.S. Supp. 2017, Section 2-136), is amended to read as
22 follows:

23 Section 2-136. A manufacturer's agent license shall authorize
24 the holder thereof to represent only the holders of a manufacturer's

1 license or nonresident seller license and to solicit and take orders
2 for the sale of wine and spirits for the purpose of resale. No such
3 license shall be issued to any person until it shall have been shown
4 to the satisfaction of the ABLE Commission that the applicant has
5 been duly authorized to act as the agent of the principal he or she
6 proposes to represent, and that the principal or principals he or
7 she proposes to represent has been duly authorized to do business in
8 the State of Oklahoma, and has appointed a service agent in this
9 state. No applicant for a manufacturer's agent license shall also
10 hold an agent license. It shall be unlawful for any person other
11 than the holder of a manufacturer's agent license or an agent
12 license to solicit or take orders in the state from a wine and
13 spirits wholesaler ~~or beer distributor~~.

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

17 Section 3-110. A. A licensed distributor designated as the
18 licensed distributor for a beer brand within a designated sales
19 territory shall present that beer brand for sale to all on-premise
20 licensees on the same price basis and without discrimination and to
21 all off-premise licensees on the same price basis within a
22 particular county and without discrimination. A licensed
23 distributor shall not sell, supply or deliver, either directly or
24 indirectly through a third party, a beer brand to a licensed

1 retailer outside of the designated sales territory of the designated
2 distributor nor to any person the licensed distributor has reason to
3 believe will sell or supply any quantity of the beer brand to any
4 retail location outside of the designated sales territory of the
5 designated distributor.

6 B. All beer shall only be transported by a marked conveyance
7 owned or leased by the licensed distributor ~~and operated by the~~
8 ~~licensed distributor or an employee of the distributor~~ for the
9 products of a licensed manufacturer within the designated sales
10 territory to the address and location of a licensed retailer within
11 that designated sales territory.

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

16 D. With the approval of the licensed manufacturer, a licensed
17 distributor may sell the designated brands to a licensed retailer
18 located in a designated sales territory of another licensed
19 distributor if that licensed distributor is temporarily unable for
20 any reason to provide the designated brands of the licensed
21 manufacturer within its designated sales territory.

22 E. All beer purchased by a licensed distributor for resale in
23 this state shall physically come into the possession of the licensed
24 distributor and be unloaded in and distributed from the licensed

1 warehouses of the licensed distributor located in this state prior
2 to being resold in this state.

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

5 SECTION 9. Section 2 of this act shall become effective July 1,
6 2018.

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

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