

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2186

 By: Williams and Henke of the
 House

7 and

8 Holt of the Senate

9
10 COMMITTEE SUBSTITUTE

11 An Act relating to alcoholic beverages; amending 37
12 O.S. 2011, Sections 163.2, 163.25, 506, as last
13 amended by Section 15, Chapter 210, O.S.L. 2016, and
14 521, as last amended by Section 1, Chapter 367,
15 O.S.L. 2016 (37 O.S. Supp. 2016, Sections 506 and
16 521) and Section 3, Chapter 366, O.S.L. 2016 (37A
17 O.S. Supp. 2016, Section 1-103), which relate to
18 definitions and motion picture theaters; modifying
19 definitions; modifying motion picture theater
20 eligibility for certain retail licenses; eliminating
21 requirement for certain separate licenses; repealing
22 37 O.S. 2011, Section 163.2, as amended by Section 1
23 of this act, which relates to definitions pertaining
24 to the manufacture and sale of low-point beer;
 repealing 37 O.S. 2011, Section 163.25, as amended by
 Section 2 of this act, which relates to low-point
 beer sales in motion picture theatres; repealing 37
 O.S. 2011, Section 506, as last amended by Section 3
 of this act, which relates to definitions pertaining
 to the Oklahoma Alcoholic Beverage Control Act;
 repealing 37 O.S. 2011, Section 521, as last amended
 by Section 4 of this act, which relates to acts
 authorized by the various intoxicating liquor
 licenses; and providing an effective date.

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

2 SECTION 1. AMENDATORY 37 O.S. 2011, Section 163.2, is
3 amended to read as follows:

4 Section 163.2 In the administration of Section 163.1 et seq. of
5 this title, the following words and phrases are given the meanings
6 respectively indicated:

7 1. "Low-point beer" means and includes beverages containing
8 more than one-half of one percent (1/2 of 1%) alcohol by volume, and
9 not more than three and two-tenths percent (3.2%) alcohol by weight,
10 including but not limited to beer or cereal malt beverages obtained
11 by the alcoholic fermentation of an infusion of barley or other
12 grain, malt or similar products;

13 2. "Person" means and includes an individual, a trust or
14 estate, a partnership, an association or a corporation;

15 3. "Manufacturer" means and includes any person who prepares
16 for human consumption by the use of raw materials or other
17 ingredients any low-point beer, as defined herein, upon which a
18 license fee and a tax are imposed by any law of this state;

19 4. "Wholesaler" means and includes any person who sells any
20 low-point beer, as defined herein, to a licensed retail dealer, as
21 hereinafter defined, for resale;

22 5. "Retail dealer" means and includes any person who sells any
23 low-point beer, as defined herein, at retail for consumption or use,
24 and such definitions include state and county fair associations, and

1 special licenses may be issued for the sale of low-point beer, as
2 herein defined, by such associations, and to other persons for the
3 sale of such low-point beer at rodeos, picnics, or other organized
4 temporary assemblages of people. The term "retail dealer" also
5 includes railways for the sale of such beverages, and licenses may
6 be issued for each dining car or railway train, which railways and
7 dining cars shall pay the same license fees as regular retail
8 dealers;

9 6. "Sale" or "sales", for the purpose of the collection of the
10 taxes imposed by any law of the state upon low-point beer, as
11 defined herein, is hereby defined to mean and include all sales by
12 all wholesalers within this state, for money or any other valuable
13 consideration, to retail dealers for resale; and, also, the term
14 "sale" or "sales" taxable under Section 163.1 et seq. of this title
15 means and includes all sales from manufacturers or wholesalers from
16 outside this state, to retail dealers for resale to consumers or
17 otherwise. The term "sale" or "sales" shall also include sales from
18 manufacturers without the state to wholesalers located within the
19 state;

20 7. "Meals" means foods commonly ordered at lunch or dinner and
21 at least part of which is cooked on the licensed premises and
22 requires the use of dining implements for consumption. Provided,
23 that the service of only food such as appetizers, sandwiches, salads
24 or desserts shall not be considered "meals";

1 8. "Motion picture theater" means ~~a place~~ an establishment
2 where low-point beer is sold and motion pictures are exhibited, and
3 to which the general public is admitted, ~~but does not include a~~
4 ~~place where meals, as defined by this section, are served, if only~~
5 ~~persons twenty-one (21) years of age or older are admitted;~~

6 9. "Existing wholesaler" means a wholesaler who distributes a
7 particular brand of low-point beer at the time a successor
8 manufacturer acquires rights to manufacture or import the particular
9 brand of low-point beer;

10 10. "Fair market value" means the value that would be
11 determined in a transaction entered into without duress or threat of
12 termination of the existing wholesaler's right and shall include all
13 elements of value, including goodwill and going-concern value;

14 11. "Good cause" means:

15 a. failure by the wholesaler to comply with the
16 provisions of a written agreement or understanding
17 with the manufacturer, or

18 b. failure by the wholesaler to comply with the duty of
19 good faith;

20 12. "Good faith" means the duty of each party to any franchise
21 and all officers, employees or agents thereof to act with honesty in
22 fact and within reasonable standards of fair dealing in the trade;
23
24

1 13. "Successor manufacturer" means a primary source of supply,
2 a brewer or an importer that acquires rights to a low-point beer
3 brand from a predecessor manufacturer;

4 14. "Successor wholesaler" means one or more wholesalers
5 designated by a successor manufacturer to replace the existing
6 wholesaler, for all or part of the existing wholesaler's territory,
7 in the distribution of the existing low-point beer brand or brands;
8 and

9 15. "On-premise consumption" shall include consumption within a
10 single building owned or operated by any agency, political
11 subdivision or public trust of this state, if the building or a part
12 thereof is defined as a common drinking area for consumption of low-
13 point beer by resolution of the governing body that owns or operates
14 the building.

15 SECTION 2. AMENDATORY 37 O.S. 2011, Section 163.25, is
16 amended to read as follows:

17 Section 163.25 ~~No~~ A retail license or permit to sell low-point
18 beer ~~shall~~ may be issued for any establishment that functions as a
19 motion picture theater. ~~If an establishment, which has functioned~~
20 ~~for some other purpose, has been licensed to sell such beverages and~~
21 ~~subsequently is operated as a motion picture theater, the license or~~
22 ~~permit shall be revoked.~~

1 SECTION 3. AMENDATORY 37 O.S. 2011, Section 506, as last
2 amended by Section 15, Chapter 210, O.S.L. 2016 (37 O.S. Supp. 2016,
3 Section 506), is amended to read as follows:

4 Section 506. When used in the Oklahoma Alcoholic Beverage
5 Control Act, the following words and phrases shall have the
6 following meaning:

7 1. "ABLE Commission" means the Alcoholic Beverage Laws
8 Enforcement Commission;

9 2. "Alcohol" means and includes hydrated oxide of ethyl, ethyl
10 alcohol, ethanol, or spirits of wine, from whatever source or by
11 whatever process produced. It does not include wood alcohol or
12 alcohol which has been denatured or produced as denatured in
13 accordance with Acts of Congress and regulations promulgated
14 thereunder;

15 3. "Alcoholic beverage" means alcohol, spirits, beer, and wine
16 as those terms are defined herein and also includes every liquid or
17 solid, patented or not, containing alcohol, spirits, wine or beer
18 and capable of being consumed as a beverage by human beings, but
19 does not include low-point beer as that term is defined in Section
20 163.2 of this title;

21 4. "Applicant" means any individual, legal or commercial
22 business entity, or any individual involved in any legal or
23 commercial business entity allowed to hold any license issued in
24 accordance with the Oklahoma Alcoholic Beverage Control Act;

1 5. "Beer" means any beverage containing more than three and
2 two-tenths percent (3.2%) of alcohol by weight and obtained by the
3 alcoholic fermentation of an infusion or decoction of barley, or
4 other grain, malt or similar products. "Beer" may or may not
5 contain hops or other vegetable products. "Beer" includes, among
6 other things, beer, ale, stout, lager beer, porter and other malt or
7 brewed liquors, but does not include sake, known as Japanese rice
8 wine;

9 6. "Bottle club" means any establishment in a county which has
10 not authorized the retail sale of alcoholic beverages by the
11 individual drink, which is required to be licensed to keep, mix, and
12 serve alcoholic beverages belonging to club members on club
13 premises;

14 7. "Brewer" means any person who produces beer in this state;

15 8. "Class B wholesaler" means and includes any person doing any
16 such acts or carrying on any such business that would require such
17 person to obtain a Class B wholesaler license hereunder;

18 9. "Convicted" and "conviction" mean and include a finding of
19 guilt resulting from a plea of guilty or nolo contendere, the
20 decision of a court or magistrate or the verdict of a jury,
21 irrespective of the pronouncement of judgment or the suspension
22 thereof;

23 10. "Director" means the Director of the Alcoholic Beverage
24 Laws Enforcement Commission under the supervision of the Commission;

1 11. "Distiller" means any person who produces spirits from any
2 source or substance, or any person who brews or makes mash, wort, or
3 wash, fit for distillation or for the production of spirits (except
4 a person making or using such material in the authorized production
5 of wine or beer, or the production of vinegar by fermentation), or
6 any person who by any process separates alcoholic spirits from any
7 fermented substance, or any person who, making or keeping mash,
8 wort, or wash, has also in his or her possession or use a still;

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

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

20 14. "Licensee" means any person holding a license under the
21 Oklahoma Alcoholic Beverage Control Act, and any agent, servant, or
22 employee of such licensee while in the performance of any act or
23 duty in connection with the licensed business or on the licensed
24 premises;

1 15. "Light beer" means a low-point beer controlled under this
2 title;

3 16. "Light wine" means any wine containing not more than
4 fourteen percent (14%) alcohol measured by volume at sixty (60)
5 degrees Fahrenheit;

6 17. "Manufacturer's agent" means a salaried or commissioned
7 salesman who sells to a wholesaler or Class B wholesaler only;

8 18. "Manufacturer" means a brewer, distiller, winemaker,
9 rectifier, or bottler of any alcoholic beverage;

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

15 20. "Mini-bar" means a closed container, either refrigerated,
16 in whole or in part, or nonrefrigerated, and access to the interior
17 of which is (1) restricted by means of a locking device which
18 requires the use of a key, magnetic card, or similar device, or (2)
19 controlled at all times by the licensee;

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

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

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

11 23. "Motion picture theater" means ~~a place~~ an establishment
12 where motion pictures are exhibited and to which the general public
13 is admitted, ~~but does not include a place where meals, as defined by~~
14 ~~this section, are served, if only persons over twenty-one (21) years~~
15 ~~of age are admitted;~~

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

19 25. "Occupation" as used in connection with "occupation tax"
20 means the sites occupied as the places of business of the
21 manufacturers, wholesalers, Class B wholesalers, retailers, mixed
22 beverage licensees, beer and wine licensees, bottle clubs, caterers,
23 public event, and special event licensees;

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

3 27. "Patron" means any person, customer, or visitor who is not
4 employed by a licensee or who is not a licensee;

5 28. "Person" means an individual, any type of partnership,
6 corporation, association, limited liability company or any
7 individual involved in the legal structure of any such business
8 entity;

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

17 a. allowing the presence and consumption of alcoholic
18 beverages by private parties which are closed to the
19 general public, or

20 b. allowing the services of a caterer serving alcoholic
21 beverages provided by a private party.

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

1 30. "Public event" means any event that can be attended by the
2 general public;

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

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

20 33. "Regulation" or "rule" means a formal rule of general
21 application promulgated by the ABLE Commission as herein required;

22 34. "Restaurant" means an establishment that is licensed to
23 sell alcoholic beverages by the individual drink for on-premises
24

1 consumption and where food is prepared and sold for immediate
2 consumption on the premises;

3 35. "Retail container for spirits and wines" means an original
4 package of any capacity approved by the United States Bureau of
5 Alcohol, Tobacco and Firearms;

6 36. "Retailer" means the holder of a Package Store License;

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

15 38. "Short_order food" means food other than full meals
16 including but not limited to sandwiches, soups, and salads.
17 Provided that popcorn, chips, and other similar snack food shall not
18 be considered "short_order food";

19 39. "Small Farm Wine" means a wine that is produced by a small
20 farm winery with seventy-five percent (75%) or more Oklahoma-grown
21 grapes, berries, other fruits, honey or vegetables;

22 40. "Small Farm Winery" means a wine-making establishment that
23 does not annually produce for sale more than ten thousand (10,000)
24 gallons of wine as reported on the United States Department of the

1 Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of Wine
2 Premises Operations (TTB Form 5120.17);

3 41. "Sparkling wine" means champagne or any artificially
4 carbonated wine;

5 42. "Spirits" means any beverage other than wine, beer or light
6 beer, which contains more than one-half of one percent (1/2 of 1%)
7 alcohol measured by volume and obtained by distillation, whether or
8 not mixed with other substances in solution and includes those
9 products known as whiskey, brandy, rum, gin, vodka, liqueurs,
10 cordials and fortified wines and similar compounds; but shall not
11 include any alcohol liquid completely denatured in accordance with
12 the Acts of Congress and regulations pursuant thereto;

13 43. "Wholesaler" means and includes any person doing any such
14 acts or carrying on any such business or businesses that would
15 require such person to obtain a wholesaler's license or licenses
16 hereunder;

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

24 45. "Winemaker" means any person who produces wine; and

1 46. "Oklahoma winemaker" means a business premises in Oklahoma
2 licensed pursuant to the Oklahoma Alcoholic Beverage Control Act
3 wherein wine is produced by the licensee who must be a resident of
4 the state. The wine product fermented in the licensed premises
5 shall be of grapes, berries and other fruits and vegetables imported
6 into this state and processed herein or shall be of grapes, berries
7 and other fruits and vegetables grown in Oklahoma.

8 Words in the plural include the singular, and vice versa, and
9 words imparting the masculine gender include the feminine, as well
10 as persons and licensees as defined in this section.

11 SECTION 4. AMENDATORY 37 O.S. 2011, Section 521, as last
12 amended by Section 1, Chapter 367, O.S.L. 2016 (37 O.S. Supp. 2016,
13 Section 521), is amended to read as follows:

14 Section 521. A. A brewer license shall authorize the holder
15 thereof: To manufacture, bottle, package, and store beer on
16 licensed premises; to sell beer in this state to holders of Class B
17 wholesaler licenses and retail licenses and to sell beer out of this
18 state to qualified persons; to sell beer produced by the licensee to
19 consumers twenty-one (21) years of age or older on the premises of
20 the brewery; and to serve free samples of beer produced by the
21 licensee to visitors twenty-one (21) years of age or older. For
22 purposes of this section, no visitor may sample more than a total of
23 twelve (12) fluid ounces of beer per day. The brewer must restrict
24 the distribution and consumption of beer samples to an area within

1 the licensed premises designated by the brewer. A current floor
2 plan that includes the designated sampling area must be on file with
3 the Oklahoma Alcoholic Beverage Laws Enforcement (ABLE) Commission.
4 No visitor under twenty-one (21) years of age shall be permitted to
5 enter this designated sampling area when samples are being
6 distributed or consumed. Samples and sales may only be distributed
7 or consumed between 10:00 a.m. and 9:00 p.m. Samples and sales of
8 beer made or served by a brewery under this section shall not be
9 considered a "sale" of beer within the meaning of Article XXVIII of
10 the Oklahoma Constitution or Section 506 of this title; however,
11 such samples and sales of beer shall be considered beer removed or
12 withdrawn from the brewery for "use or consumption" within the
13 meaning of Section 542 of this title for excise tax determination
14 and reporting requirements.

15 B. A distiller license shall authorize the holder thereof: To
16 manufacture, bottle, package, and store spirits on licensed
17 premises; to sell spirits in this state to licensed wholesalers and
18 manufacturers only; to sell spirits out of this state to qualified
19 persons; to purchase from licensed distillers and rectifiers in this
20 state, and import spirits from without this state for manufacturing
21 purposes in accordance with federal laws and regulations.

22 C. A winemaker license shall authorize the holder thereof: To
23 manufacture (including such mixing, blending and cellar treatment as
24 authorized by federal law), bottle, package, and store on licensed

1 premises wine containing not more than twenty-four percent (24%)
2 alcohol by volume, provided the bottle or package sizes authorized
3 shall be limited to the capacities approved by the United States
4 Alcohol and Tobacco Tax and Trade Bureau; to sell wine in this state
5 to licensed wholesalers and manufacturers; to sell bottles of wine
6 produced at the winery from grapes and other fruits and berries
7 grown in this state, if available, to consumers on the premises of
8 the winery; to serve visitors on the licensed premises samples of
9 wine produced on the premises; to serve samples of wine produced at
10 the winery at festivals and trade shows; to sell wine produced at
11 the winery, in original sealed containers, at festivals and trade
12 shows; to sell wine out of this state to qualified persons; to
13 purchase from licensed winemakers, distillers and rectifiers in this
14 state, and to import into this state wine, brandy and fruit spirits
15 for use in manufacturing in accordance with federal laws and
16 regulations; provided, a winemaker either within or without this
17 state that annually produces no more than ten thousand (10,000)
18 gallons of wine may elect to sell and self-distribute the wine
19 produced by such winemaker directly to licensed retail package
20 stores and restaurants in this state; and provided further that:

21 1. Any such winemaker which elects to directly sell its wine to
22 package stores and restaurants shall not also use a licensed
23 wholesale distributor as a means of distribution, and shall be
24 required to sell its wines to every package store and restaurant

1 licensee who desires to purchase the same, on the same price basis
2 and without discrimination;

3 2. If a winemaker or winery sells directly to a retail package
4 store or restaurant, the winemaker shall transport the wine from the
5 winemaker's winery to the premises where the wine is to be delivered
6 only in vehicles owned or leased by the winemaker and not by common
7 or private contract carrier and shall obtain all necessary permits
8 as required by the Oklahoma Alcoholic Beverage Control Act; and

9 3. If the production volume limit applicable to winemakers is
10 ruled to be unconstitutional by a court of competent jurisdiction,
11 then no winemaker shall be permitted to directly sell its wine to
12 retail package stores or restaurants in this state.

13 D. A winemaker self-distribution license shall authorize a
14 licensed winemaker within or without this state which is permitted
15 by Section 3 of Article XXVIII of the Oklahoma Constitution and
16 subsection C of this section, to distribute its wine directly to
17 retail package stores and restaurants in this state and that elects
18 to do so, to sell and deliver its wines directly to licensed retail
19 package stores and restaurants in this state in full case lots only,
20 and in accordance with the provisions of the Oklahoma Alcoholic
21 Beverage Control Act and such rules as the ABLE Commission shall
22 adopt.

23 E. A rectifier license shall authorize the holder thereof: To
24 rectify spirits and wines, bottle, package, and store same on the

1 licensed premises; to sell spirits and wines in this state to
2 licensed wholesalers and manufacturers only; to sell spirits and
3 wines out of this state to qualified persons; to purchase from
4 licensed manufacturers in this state; and to import into this state
5 for manufacturing purposes spirits and wines in accordance with
6 federal laws and regulations.

7 F. 1. A wholesaler license shall authorize the holder thereof:
8 To purchase and import into this state spirits and wines from
9 persons authorized to sell same who are the holders of a nonresident
10 seller license, and their agents who are the holders of
11 manufacturers agent licenses; to purchase spirits and wines from
12 licensed distillers, rectifiers and winemakers in this state; to
13 purchase spirits and wines from licensed wholesalers, to the extent
14 set forth in paragraphs 2 and 3 of this subsection; to sell in
15 retail containers in this state to retailers, mixed beverage,
16 caterer, special event, public event, hotel beverage or
17 airline/railroad beverage licensees, spirits and wines which have
18 been received and unloaded at the bonded warehouse facilities of the
19 wholesaler before such sale; to sell to licensed wholesalers, to the
20 extent set forth in paragraphs 2 and 3 of this subsection, spirits
21 and wines which have been received and unloaded at the bonded
22 warehouse facilities of the wholesaler before such sale; and to sell
23 spirits and wines out of this state to qualified persons. Provided,
24 however, sales of spirits and wine in containers with a capacity of

1 less than one-twentieth (1/20) gallon by a holder of a wholesaler
2 license shall be in full case lots and in the original unbroken
3 case. Wholesalers shall be authorized to place such signs outside
4 their place of business as are required by Acts of Congress and by
5 such laws and regulations promulgated under such Acts.

6 2. Wholesalers are prohibited from purchasing annually in
7 excess of fifteen percent (15%) of their total spirits inventory and
8 fifteen percent (15%) of their total wine inventory from one or more
9 wholesalers. Wholesalers are also prohibited from purchasing
10 annually in excess of fifteen percent (15%) of their inventory of
11 any individual brand of spirits or wine from one or more
12 wholesalers. The volume of spirits and wine and of each brand that
13 each wholesaler is permitted to purchase annually from other
14 wholesalers shall be calculated by the ABLE Commission by
15 multiplying fifteen percent (15%) by:

- 16 a. the total volume of spirits sales of the wholesaler,
17 by liter, from the previous calendar year, and
- 18 b. the total volume of wine sales of the wholesaler, by
19 liter, from the previous calendar year, and
- 20 c. the volume of sales of each brand of spirits or wine
21 of the wholesaler, by liter, from the previous
22 calendar year.

23 A wholesaler who did not post any sales of spirits, wine or of a
24 particular brand in the previous calendar year shall be deemed to

1 have sold the same volume of spirits, wine or of a particular brand
2 as the wholesaler posting the smallest volumes of sales in spirits,
3 wine or of a particular brand for that year for the purposes of this
4 paragraph. Notwithstanding the foregoing, wholesalers shall not
5 purchase any inventory in spirits or wine from any other wholesaler
6 until such time that the purchasing wholesaler possesses an
7 inventory valued at no less than Two Hundred Fifty Thousand Dollars
8 (\$250,000.00). Inventory valuation shall be based on the original
9 actual price paid by the purchasing wholesaler to the nonresident
10 seller for the inventory.

11 3. A wholesaler may sell spirits and wine to other wholesalers
12 or purchase spirits and wines from other wholesalers without
13 complying with paragraph 2 of this subsection in the case of the
14 sale, purchase, or other transfer or acquisition of the entire
15 business of a wholesaler, including the inventory of spirits and
16 wine.

17 4. A wholesaler license shall authorize the holder thereof to
18 operate a single bonded warehouse with a single central office
19 together with delivery facilities at a location in this state only
20 at the principal place of business for which the wholesaler license
21 was granted.

22 5. All licensed wholesalers shall register prices, purchase and
23 keep on hand or have on order a fifteen-day supply of all brands
24 constituting the top eighteen brands in total sales by all Oklahoma

1 wholesalers during the past twelve-month period, according to the
2 records of the ABLE Commission as revised by the ABLE Commission
3 quarterly; provided, however, that not more than three brands of any
4 particular nonresident seller shall be included in the top-brands
5 classification. All purchase orders for these top eighteen brands
6 must show an expected due delivery date. These purchase orders may
7 only be canceled with prior approval of the Director of the ABLE
8 Commission, unless a wholesaler shall have in its warehouse a
9 fifteen-day supply of merchandise on such purchase order.

10 In order to allow the ABLE Commission to determine the top
11 eighteen brands, wholesalers must submit to the ABLE Commission
12 every sixty (60) days a sworn affidavit listing their top twenty-
13 five brands in sales for the previous sixty (60) days, excluding
14 sales to wholesalers. Such affidavits shall be submitted in
15 conjunction with the original price postings of wholesalers.

16 A fifteen-day supply of a particular brand for a particular
17 wholesaler shall be based upon the market share of the wholesaler,
18 determined by first multiplying the total number of liters of such
19 brand sold by all wholesalers to all retailers during the previous
20 calendar year by the percentage that the total sales of wine and
21 spirits of the particular wholesaler, in liters, for such calendar
22 year bears to the total sales of wine and spirits, in liters,
23 reported by all wholesalers for such calendar year; and then
24 dividing by twenty-four (24); provided, that a fifteen-day supply

1 for a wholesaler who has not been in business for the entirety of
2 the previous calendar year shall be deemed to be equal to that of
3 the wholesaler who was in business for the entirety of the previous
4 calendar year and who reported the lowest volume of sales of wine
5 and spirits, in liters, of any wholesaler having been in business
6 for such period.

7 G. A Class B wholesaler license shall authorize the holder
8 thereof: To purchase and import into this state beer from persons
9 authorized to sell same who are the holders of nonresident seller
10 licenses, and their agents who are the holders of manufacturers
11 agent licenses; to purchase beer from licensed brewers and Class B
12 wholesalers in this state; to sell in retail containers to
13 retailers, mixed beverage, caterer, special event, public event,
14 hotel beverage, and airline/railroad beverage licensees in this
15 state, beer which has been unloaded and stored at the holder's self-
16 owned or leased and self-operated warehouse facilities for a period
17 of at least twenty-four (24) hours before such sale; and to sell
18 beer in this state to Class B wholesalers and out of this state to
19 qualified persons, including federal instrumentalities and voluntary
20 associations of military personnel on federal enclaves in this state
21 over which this state has ceded jurisdiction.

22 H. A package store license shall authorize the holder thereof:
23 To purchase alcohol, spirits, beer, and wine in retail containers
24 from the holder of a brewer, wholesaler or Class B wholesaler

1 license and to purchase wine from a winemaker who is permitted and
2 has elected to self-distribute as provided in Section 3 of Article
3 XXVIII of the Oklahoma Constitution and to sell same on the licensed
4 premises in such containers to consumers for off-premises
5 consumption only and not for resale; provided, wine, beer, and
6 spirits may be sold to charitable organizations that are holders of
7 charitable alcoholic beverage auction or charitable alcoholic
8 beverage event licenses. All alcoholic beverages that are sold by a
9 package store are to be sold at ordinary room temperature.

10 I. A mixed beverage license shall authorize the holder thereof:
11 To purchase alcohol, spirits, beer or wine in retail containers from
12 the holder of a wholesaler or Class B wholesaler license or as
13 specifically provided by law and to sell, offer for sale and possess
14 mixed beverages for on-premises consumption only; provided, the
15 holder of a mixed beverage license issued for an establishment which
16 is also a restaurant may purchase wine directly from a winemaker who
17 is permitted and has elected to self-distribute as provided in
18 Section 3 of Article XXVIII of the Oklahoma Constitution.

19 Sales and service of mixed beverages by holders of mixed
20 beverage licenses shall be limited to the licensed premises of the
21 licensee unless the holder of the mixed beverage license also
22 obtains a caterer license or a mixed beverage/caterer combination
23 license. A mixed beverage license shall only be issued in counties
24 of this state where the sale of alcoholic beverages by the

1 individual drink for on-premises consumption has been authorized. A
2 separate license shall be required for each place of business. ~~No~~
3 Upon application, a mixed beverage license shall be issued for any
4 place of business functioning as a motion picture theater, as
5 defined by Section 506 of this title. A mixed beverage licensee
6 whose main purpose is hosting live performance art presentations may
7 utilize the services of a licensed caterer for its alcoholic
8 beverage service as long as it is not open to the public more than
9 one hundred twenty (120) days per year.

10 J. A bottle club license shall authorize the holder thereof: To
11 store, possess and mix alcoholic beverages belonging to members of
12 the club and to serve such alcoholic beverages for on-premises
13 consumption to club members. A bottle club license shall only be
14 issued in counties of this state where the sale of alcoholic
15 beverages by the individual drink for on-premises consumption has
16 not been authorized. A separate license shall be required for each
17 place of business.

18 K. A caterer license shall authorize the holder thereof: To
19 sell mixed beverages for on-premises consumption incidental to the
20 sale or distribution of food at particular functions, occasions, or
21 events which are private and temporary in nature. A caterer license
22 shall not be issued in lieu of a mixed beverage license. A caterer
23 license shall only be issued or utilized in counties of this state
24 where the sale of alcoholic beverages by the individual drink for

1 on-premises consumption has been authorized. A separate license
2 shall be required for each place of business.

3 A licensed caterer shall be authorized to sell mixed beverages
4 for on-premises consumption incidental to the distribution of food
5 at temporary private functions, at temporary public events that are
6 licensed and approved by the ABLE Commission, and on the premises of
7 a mixed beverage licensee whose main purpose is the hosting of live
8 performing art presentations and is not open to the public more than
9 one hundred twenty (120) days per year.

10 L. 1. An annual special event license shall authorize the
11 holder thereof: To sell and distribute mixed beverages for
12 consumption on the premises for which the license has been issued
13 for up to four events to be held over a period not to exceed one (1)
14 year, not to exceed two such events in any three-month period. For
15 purposes of this paragraph, an event shall not exceed a period of
16 ten (10) consecutive days. An annual special event license shall
17 only be issued in counties of this state where the sale of alcoholic
18 beverages by the individual drink for on-premises consumption has
19 been authorized. The holder of an annual special event license
20 shall provide written notice to the ABLE Commission of each special
21 event not less than ten (10) days before the event is held.

22 2. A quarterly special event license shall authorize the holder
23 thereof: To sell and distribute mixed beverages for consumption on
24 the premises for which the license has been issued for up to three

1 events to be held over a period not to exceed three (3) months. For
2 purposes of this paragraph, an event shall not exceed a period of
3 ten (10) consecutive days. A quarterly special event license shall
4 only be issued in counties of this state where the sale of alcoholic
5 beverages by the individual drink for on-premises consumption has
6 been authorized. The holder of a quarterly special event license
7 shall provide written notice to the ABLE Commission of each special
8 event not less than ten (10) days before the event is held.

9 3. An annual public event license shall authorize the holder
10 thereof: to sell and distribute mixed beverages for consumption on
11 the premises for which the license has been issued for up to six
12 events to be held over a period not to exceed one (1) year. The
13 applicant for an annual public event license, who does not already
14 hold a license issued by the ABLE Commission, shall make application
15 not less than sixty (60) days before its first event. The ABLE
16 Commission shall have the authority to waive the sixty-day
17 requirement at its discretion. For purposes of this paragraph, an
18 event shall not exceed a period of three (3) consecutive days. An
19 annual public event license shall only be issued in counties of this
20 state where the sale of alcoholic beverages by the individual drink
21 for on-premises consumption has been authorized. The holder of an
22 annual public event license shall provide written notice to the ABLE
23 Commission of each subsequent public event not less than ten (10)
24 days before the event is held. A public event license shall not be

1 used in lieu of a mixed beverage license. The holder of an annual
2 public event license may choose to utilize the services of a
3 licensed caterer to provide and distribute the alcoholic beverages
4 at their events. When the applicant chooses to utilize the services
5 of a licensed caterer, the applicant shall declare upon application
6 which licensed caterer will be used. The licensed caterer shall be
7 responsible for payment of all applicable mixed beverage taxes
8 through the existing Mixed Beverage Tax Permit issued to his or her
9 business by the Oklahoma Tax Commission.

10 4. A one-time public event license shall authorize the holder
11 thereof: to sell and distribute mixed beverages for consumption on
12 the premises for which the license has been issued. The applicant
13 for a one-time public event license, who does not already hold a
14 license issued by the ABLE Commission, shall make application not
15 less than sixty (60) days before the event. The ABLE Commission
16 shall have the authority to waive the sixty-day requirement at its
17 discretion. For purposes of this paragraph, an event shall not
18 exceed a period of three (3) consecutive days. A public event
19 license shall only be issued in counties of this state where the
20 sale of alcoholic beverages by the individual drink for on-premises
21 consumption has been authorized. A public event license shall not
22 be used in lieu of a mixed beverage license. The holder of a one-
23 time public event license may choose to utilize the services of a
24 licensed caterer to provide and distribute the alcoholic beverages

1 at his or her event. When the applicant chooses to utilize the
2 services of a licensed caterer, the applicant shall declare upon
3 application which licensed caterer will be used. The licensed
4 caterer shall be responsible for payment of all applicable mixed
5 beverage taxes through the existing Mixed Beverage Tax Permit issued
6 to his or her business by the Oklahoma Tax Commission.

7 M. A hotel beverage license shall authorize the holder thereof:
8 To sell or serve alcoholic beverages in 50 milliliter spirits, 187
9 milliliter wine, and 12-ounce malt beverage containers which are
10 distributed from a hotel room mini-bar. A hotel beverage license
11 shall only be issued in counties of this state where the sale of
12 alcoholic beverages by the individual drink for on-premises
13 consumption has been authorized. A hotel beverage license shall
14 only be issued to a hotel or motel as defined by Section 506 of this
15 title which is also the holder of a mixed beverage license.
16 Provided, that application may be made simultaneously for both such
17 licenses. A separate license shall be required for each place of
18 business.

19 N. An airline/railroad beverage license shall authorize the
20 holder thereof: To sell or serve alcoholic beverages in or from any
21 size container on a commercial passenger airplane or railroad
22 operated in compliance with a valid license, permit or certificate
23 issued under the authority of the United States or this state, even
24 though the airplane or train, in the course of its travel, may cross

1 an area in which the sale of alcoholic beverages by the individual
2 drink is not authorized and to store alcoholic beverages in sealed
3 containers of any size at any airport or station regularly served by
4 the licensee, in accordance with rules promulgated by the Alcoholic
5 Beverage Laws Enforcement Commission. Alcoholic beverages purchased
6 by the holder of an airline/railroad license from the holder of a
7 wholesaler license shall be presumed to be purchased for consumption
8 outside the State of Oklahoma or in interstate commerce, and shall
9 be exempt from the excise tax provided for in Section 553 of this
10 title.

11 O. An agent license shall authorize the holder thereof: To
12 represent only the holders of licenses within this state, other than
13 retailers, authorized to sell alcoholic beverages to retail dealers
14 in Oklahoma, and to solicit and to take orders for the purchase of
15 alcoholic beverages from retailers including licensees authorized to
16 sell alcoholic beverages by the individual drink for on-premises
17 consumption. Such license shall be issued only to agents and
18 employees of the holder of a license under the Oklahoma Alcoholic
19 Beverage Control Act, but no such license shall be required of an
20 employee making sales of alcoholic beverages on licensed premises of
21 the employee's principal. No person holding an agent license shall
22 be entitled to a manufacturers agent license.

23 P. An employee license shall authorize the holder thereof: To
24 work in a package store, mixed beverage establishment, beer and wine

1 establishment, bottle club, public event or any establishment where
2 alcohol or alcoholic beverages are sold, mixed, or served. Persons
3 employed by a mixed beverage licensee, beer and wine licensee,
4 public event licensee or a bottle club who do not participate in the
5 service, mixing, or sale of mixed beverages shall not be required to
6 have an employee license. Provided, however, that a manager
7 employed by a mixed beverage licensee, public event licensee or a
8 bottle club shall be required to have an employee license whether or
9 not the manager participates in the service, mixing or sale of mixed
10 beverages. Applicants for an employee license must have a health
11 card issued by the county in which they are employed, if the county
12 issues such a card. Employees of special event, caterer, unless
13 catering a mixed beverage licensed premises, or airline/railroad
14 beverage licensees shall not be required to obtain an employee
15 license. Persons employed by a hotel licensee who participate in
16 the stocking of hotel room mini-bars or in the handling of alcoholic
17 beverages to be placed in such devices shall be required to have an
18 employee license.

19 Q. An industrial license may be issued to persons desiring to
20 import, transport, and use alcohol for the following purposes:

21 1. Manufacture of patent, proprietary, medicinal,
22 pharmaceutical, antiseptic, and toilet preparations;

23 2. Manufacture of extracts, syrups, condiments, and food
24 products; and

1 3. For use in scientific, chemical, mechanical, industrial, and
2 medicinal products and purposes.

3 No other provisions of the Oklahoma Alcoholic Beverage Control
4 Act shall apply to alcohol intended for industrial, medical,
5 mechanical or scientific use.

6 Any person receiving alcohol under authority of an industrial
7 license who shall use, permit, or cause same to be used for purposes
8 other than authorized purposes specified above, and all such
9 alcohol, shall be liable to all provisions of the Oklahoma Alcoholic
10 Beverage Control Act, including payment of tax thereon.

11 No provisions of the Oklahoma Alcoholic Beverage Control Act
12 shall apply to alcohol withdrawn by any person free of federal tax
13 under a tax-free permit issued by the United States government, if
14 such alcohol is received, stored, and used as authorized by federal
15 laws.

16 R. A carrier license may be issued to any common carrier
17 operating under a certificate of convenience and necessity issued by
18 any duly authorized federal or state regulatory agency. Such
19 license shall authorize the holder thereof to transport alcoholic
20 beverages other than wine sold directly by a winemaker or winery to
21 a retail package store or restaurant into, within, and out of this
22 state under such terms, conditions, limitations, and restrictions as
23 the ABLE Commission may prescribe by order issuing such license and
24 by regulations.

1 S. A private carrier license may be issued to any carrier other
2 than a common carrier described in subsection Q of this section.
3 Such license shall authorize the holder thereof to transport
4 alcoholic beverages other than wine sold directly by a winemaker or
5 winery to a retail package store or restaurant into, within, or out
6 of this state under such terms, conditions, limitations, and
7 restrictions as the ABLE Commission may prescribe by order issuing
8 such license and by regulations. No carrier license or private
9 carrier license shall be required of licensed brewers, distillers,
10 winemakers, rectifiers, wholesalers, or Class B wholesalers, to
11 transport alcoholic beverages from the place of purchase or
12 acquisition to the licensed premises of such licensees and from such
13 licensed premises to the licensed premises of the purchaser in
14 vehicles owned or leased by such licensee when such transportation
15 is for a lawful purpose and not for hire.

16 No carrier license or private carrier license shall be required
17 of the holder of a package store, mixed beverage, caterer, special
18 event, hotel beverage, public event or airline/railroad license to
19 pick up alcoholic beverage orders from the licensees' wholesaler or
20 Class B wholesaler from whom they are purchased, and to transport
21 such alcoholic beverages from the place of purchase or acquisition
22 to the licensed premise of such licensees in vehicles owned or under
23 the control of such licensee or a licensed employee of such licensee
24

1 under such terms, conditions, limitations and restrictions as the
2 ABLE Commission may prescribe.

3 T. A bonded warehouse license shall authorize the holder
4 thereof: To receive and store alcoholic beverages for the holders of
5 storage licenses on the licensed premises of the bonded warehouse
6 licensee. No goods, wares or merchandise other than alcoholic
7 beverages may be stored in the same bonded warehouse with alcoholic
8 beverages. The holder of a bonded warehouse license shall furnish
9 and file with the ABLE Commission a bond running to all bailers of
10 alcoholic beverages under proper storage licenses and their
11 assignees (including mortgagees or other bona fide lienholders)
12 conditioned upon faithful performance of the terms and conditions of
13 such bailments.

14 U. A storage license may be issued to a holder of a brewer,
15 distiller, winemaker, rectifier, wholesaler, Class B wholesaler,
16 nonresident seller, package store, mixed beverage, caterer, public
17 event or hotel beverage license, and shall authorize the holder
18 thereof: To store alcoholic beverages in a public warehouse holding
19 a bonded warehouse license, and no goods, wares or merchandise other
20 than alcoholic beverages may be stored in the same warehouse with
21 alcoholic beverages in private warehouses owned or leased and
22 operated by such licensees elsewhere than on their licensed
23 premises. Provided:

1 1. A storage license issued to a Class B wholesaler shall
2 permit the storage of light beer and permit the sale and delivery to
3 retailers from the premises covered by such license;

4 2. Any licensee who is the holder of a mixed beverage/caterer
5 combination license or the holder of a mixed beverage license and a
6 hotel beverage license who is issued a storage license shall store
7 all inventories of alcoholic beverages either on the premises of the
8 mixed beverage establishment or in the warehouse;

9 3. A storage license shall not be required for a special event
10 licensee storing alcoholic beverages for use at a subsequent event;

11 4. A storage license shall be required for a public event
12 licensee storing alcoholic beverages for use at a subsequent event;
13 and

14 5. Notwithstanding the provisions of subsection I of this
15 section or any other provision of this title, a licensee who wholly
16 owns more than one licensed mixed beverage establishment may store
17 alcoholic beverages for each of the licensed establishments in one
18 location under one storage license. Alcoholic beverages purchased
19 and stored pursuant to the provisions of a storage license, for one
20 licensed mixed beverage establishment may be transferred by a
21 licensee to another licensed mixed beverage establishment which is
22 wholly owned by the same licensee. Notice of such a transfer shall
23 be given in writing to the Oklahoma Tax Commission and the ABLE
24 Commission within three (3) business days of the transfer. The

1 notice shall clearly show the quantity, brand and size of every
2 transferred bottle or case.

3 V. A sacramental wine supplier license shall authorize the
4 holder thereof: To sell, ship or deliver sacramental wine to any
5 religious corporation or society of this state holding a valid
6 exemption from taxation issued pursuant to Section 501(a) of the
7 Internal Revenue Code, 1986, and listed as an exempt organization in
8 Section 501(c)(3) of the Internal Revenue Code, 1986, of the United
9 States, as amended.

10 W. A beer and wine license shall authorize the holder thereof:
11 To purchase beer and wine in retail containers from the holder of a
12 wholesaler or Class B wholesaler license or as specifically provided
13 by law and to sell, offer for sale and possess beer and wine for on-
14 premises consumption only; provided, the holder of a beer and wine
15 license issued for an establishment which is also a restaurant may
16 purchase wine from a winemaker who is permitted and has elected to
17 self-distribute as provided in Section 3 of Article XXVIII of the
18 Oklahoma Constitution.

19 Sales and service of beer and wine by holders of beer and wine
20 licenses shall be limited to the licensed premises of the licensee
21 unless the holder of the beer and wine license also obtains a
22 caterer license. A beer and wine license shall only be issued in
23 counties of this state where the sale of alcoholic beverages by the
24 individual drink for on-premises consumption has been authorized. A

1 separate license shall be required for each place of business. No
2 beer and wine license shall be issued for any place of business
3 functioning as a motion picture theater, as defined by Section 506
4 of this title. No spirits shall be stored, possessed or consumed on
5 the licensed premises of a beer and wine licensee.

6 X. A charitable auction or charitable alcoholic beverage event
7 license may be issued to a charitable organization exempt from
8 taxation under Section 501(c)(3), (4), (5), (6), (7), (8), (9),
9 (10), or (19) of the United States Internal Revenue Code. The
10 charitable alcoholic beverage event license shall authorize the
11 holder thereof to conduct a wine, spirit and/or beer event which may
12 consist of one or more of a wine, spirit and/or beer tasting event,
13 a wine, spirit and/or beer dinner event or a wine, spirit and/or
14 beer auction, which may be either a live auction conducted by an
15 auctioneer or a silent auction for which:

16 1. Bid sheets are accepted from interested bidders at the
17 event;

18 2. The holders of tickets are allowed to bid online for a
19 period not exceeding thirty (30) days prior to the event; or

20 3. Both bid sheets are accepted at the event and online bids
21 are accepted pursuant to paragraph 2 of this subsection.

22 A charitable alcoholic beverage event shall be conducted solely
23 to raise funds for charitable purposes. A charitable alcoholic
24 beverage license will allow the event attendees access to tastings,

1 samples, dinners, and alcoholic beverages as parts of their entrance
2 fee or ticket price. Wine, spirits and/or beer used in, served, or
3 consumed at a charitable alcoholic beverage event may be purchased
4 by the charitable organization or donated by any person or entity.
5 The charitable alcoholic beverage event license shall be issued for
6 a period not exceeding four (4) days. Only eight such licenses may
7 be issued to an organization in any twelve-month period. The
8 charitable organization holding a charitable alcoholic beverage
9 event license shall not be required to obtain a special event
10 license. Charitable auction and charitable alcoholic beverage event
11 license holders may also utilize a licensed caterer to provide
12 additional alcohol services at the event and on the premises. The
13 charitable auction license shall authorize the holder thereof to
14 auction wine, spirits, and/or beer purchased from a retail package
15 store or received as a gift from an individual if the auction is
16 conducted to raise funds for charitable purposes. The charitable
17 auction license shall be issued for a period not to exceed two (2)
18 days. Only four such licenses shall be issued to an organization in
19 any twelve-month period. The maximum amount of wine, spirits,
20 and/or beer auctioned pursuant to the charitable auction license
21 shall not exceed fifty (50) gallons. All wine, beer, and spirits
22 auctioned pursuant to the charitable auction license shall be
23 registered and all fees and taxes shall be paid in accordance with
24 the Oklahoma Alcoholic Beverage Control Act.

1 Y. A mixed beverage/caterer combination license shall authorize
2 the holder thereof: To purchase or sell mixed beverages as
3 specifically provided by law for the holder of a mixed beverage
4 license or a caterer license. All provisions of the Oklahoma
5 Alcoholic Beverage Control Act applicable to mixed beverage licenses
6 or caterer licenses, or the holders thereof, shall also be
7 applicable to mixed beverage/caterer combination licenses or the
8 holders thereof, except where specifically otherwise provided. A
9 mixed beverage/caterer combination license shall only be issued in
10 counties of this state where the sale of alcoholic beverages by the
11 individual drink for on-premises consumption has been authorized. A
12 separate license shall be required for each place of business.

13 A licensed mixed beverage/caterer licensee shall be authorized
14 to sell mixed beverages for on-premises consumption incidental to
15 the distribution of food at temporary private functions, at
16 temporary public events that are licensed and approved by the ABLE
17 Commission, and on the premises of a mixed beverage licensee whose
18 main purpose is the hosting of live art presentations and is not
19 open to the public more than one hundred twenty (120) days per year.

20 Z. A small farm winery license shall authorize the holder
21 thereof: To manufacture and bottle wines produced by that small
22 farm winery. In addition, a small farm winery license authorizes
23 the holder of that permit to bottle and sell wines produced by
24 another small farm winery. In order for a small farm winery to

1 bottle and sell another small farm winery's products, both the
2 selling winery and the buying winery shall be small farm winery
3 permit holders. A small farm wine may display the trademarked
4 "Oklahoma Grown" sticker available from the Oklahoma Grape Industry
5 Council.

6 AA. In the event any portion of this section is declared
7 invalid for any reason, the invalid portion shall be severed and the
8 rest and remainder of the section shall be saved and given full
9 force and application.

10 BB. Except as provided in Sections 554.1 and 554.2 of this
11 title with respect to cities, towns and counties, and except as may
12 be provided under Title 68 of the Oklahoma Statutes with respect to
13 the Oklahoma Tax Commission, no license or permit other than
14 licenses as provided under the Oklahoma Alcoholic Beverage Control
15 Act shall be required of any licensee by any agency, instrumentality
16 or political subdivision of this state to engage in any activity
17 covered by the Oklahoma Alcoholic Beverage Control Act anywhere
18 within the State of Oklahoma and no agency, instrumentality or
19 political subdivision of this state shall interfere with the ABLE
20 Commission's regulation of, or a wholesaler's performance of, the
21 sale, distribution, possession, handling or marketing of alcoholic
22 beverages on any premises of any licensee as defined in Section 506
23 of this title.

1 SECTION 5. AMENDATORY Section 3, Chapter 366, O.S.L.
2 2016 (37A O.S. Supp. 2016, Section 1-103), is amended to read as
3 follows:

4 Section 1-103. As used in the Oklahoma Alcoholic Beverage
5 Control Act:

6 1. "ABLE Commission" or "Commission" means the Alcoholic
7 Beverage Laws Enforcement Commission;

8 2. "Alcohol" means and includes hydrated oxide of ethyl, ethyl
9 alcohol, ethanol or spirits of wine, from whatever source or by
10 whatever process produced. It does not include wood alcohol or
11 alcohol which has been denatured or produced as denatured in
12 accordance with Acts of Congress and regulations promulgated
13 thereunder;

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

18 4. "Applicant" means any individual, legal or commercial
19 business entity, or any individual involved in any legal or
20 commercial business entity allowed to hold any license issued in
21 accordance with the Oklahoma Alcoholic Beverage Control Act;

22 5. "Beer" means any beverage of alcohol by volume and obtained
23 by the alcoholic fermentation of an infusion or decoction of barley,
24 or other grain, malt or similar products. "Beer" may or may not

1 contain hops or other vegetable products. "Beer" includes, among
2 other things, beer, ale, stout, lager beer, porter and other malt or
3 brewed liquors, but does not include sake, known as Japanese rice
4 wine;

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

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

12 8. "Bottle club" means any establishment in a county which has
13 not authorized the retail sale of alcoholic beverages by the
14 individual drink, which is required to be licensed to keep, mix and
15 serve alcoholic beverages belonging to club members on club
16 premises;

17 9. "Brand" means any word, name, group of letters, symbol or
18 combination thereof, that is adopted and used by a licensed
19 manufacturer to identify a specific beer and to distinguish that
20 product from another beer;

21 10. "Brand extension" means:

22 a. after the effective date of this act, any brand of
23 beer introduced by a manufacturer in this state which
24 either:

1 (1) incorporates all or a substantial part of the
2 unique features of a preexisting brand of the
3 same licensed manufacturer, or

4 (2) relies to a significant extent on the goodwill
5 associated with the preexisting brand, or

6 b. any brand of beer that a manufacturer, the majority of
7 whose total volume of all brands of beer distributed
8 in this state by such manufacturer on January 1, 2016,
9 was distributed as low-point beer, desires to sell,
10 introduces, begins selling or theretofore has sold and
11 desires to continue selling a strong beer in this
12 state which either:

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

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

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

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

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

10 14. "Convenience store" means any person primarily engaged in
11 retailing a limited range of general household items and groceries,
12 with extended hours of operation, whether or not engaged in retail
13 sales of automotive fuels in combination with such sales;

14 15. "Convicted" and "conviction" mean and include a finding of
15 guilt resulting from a plea of guilty or nolo contendere, the
16 decision of a court or magistrate or the verdict of a jury,
17 irrespective of the pronouncement of judgment or the suspension
18 thereof;

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

20 17. "Distiller" means any person who produces spirits from any
21 source or substance, or any person who brews or makes mash, wort or
22 wash, fit for distillation or for the production of spirits (except
23 a person making or using such material in the authorized production
24 of wine or beer, or the production of vinegar by fermentation), or

1 any person who by any process separates alcoholic spirits from any
2 fermented substance, or any person who, making or keeping mash, wort
3 or wash, has also in his or her possession or use a still;

4 18. "Distributor agreement" means the written agreement between
5 the distributor and manufacturer as set forth in Section ~~78~~ 3-108 of
6 this ~~act~~ title;

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

9 20. "Dual strength beer" means a brand of beer that,
10 immediately prior to the effective date of this act, was being sold
11 and distributed in this state:

12 a. as a low-point beer pursuant to the Low-Point Beer
13 Distribution Act in effect immediately prior to the
14 effective date of this act, and

15 b. as strong beer pursuant to the Alcoholic Beverage
16 Control Act in effect immediately prior to the
17 effective date of this act.

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

20 21. "Fair market value" means the value in the subject
21 territory covered by the written agreement with the distributor or
22 wholesaler that would be determined in an arm's length transaction
23 entered into without duress or threat of termination of the
24

1 distributor's or wholesaler's rights and shall include all elements
2 of value, including goodwill and going-concern value;

3 22. "Good cause" means:

4 a. failure by the distributor to comply with the material
5 and reasonable provisions of a written agreement or
6 understanding with the manufacturer, or

7 b. failure by the distributor to comply with the duty of
8 good faith;

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

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

17 25. "Hotel" or "motel" means an establishment which is licensed
18 to sell alcoholic beverages by the individual drink and which
19 contains guestroom accommodations with respect to which the
20 predominant relationship existing between the occupants thereof and
21 the owner or operator of the establishment is that of innkeeper and
22 guest. For purposes of this section, the existence of other legal
23 relationships as between some occupants and the owner or operator
24 thereof shall be immaterial;

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

4 27. "Licensee" means any person holding a license under the
5 Oklahoma Alcoholic Beverage Control Act, and any agent, servant or
6 employee of such licensee while in the performance of any act or
7 duty in connection with the licensed business or on the licensed
8 premises;

9 28. "Low-point beer" shall mean any beverages containing more
10 than one-half of one percent (1/2 of 1%) alcohol by volume, and not
11 more than three and two-tenths percent (3.2%) alcohol by weight,
12 including but not limited to, beer or cereal malt beverages obtained
13 by the alcoholic fermentation of an infusion by barley or other
14 grain, malt or similar products;

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

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

21 31. "Meals" means foods commonly ordered at lunch or dinner and
22 at least part of which is cooked on the licensed premises and
23 requires the use of dining implements for consumption. Provided,
24

1 that the service of only food such as appetizers, sandwiches, salads
2 or desserts shall not be considered "meals";

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

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

9 33. "Mixed beverage cooler" means any beverage, by whatever
10 name designated, consisting of an alcoholic beverage and fruit or
11 vegetable juice, fruit or vegetable flavorings, dairy products or
12 carbonated water containing more than one-half of one percent (1/2
13 of 1%) of alcohol measured by volume but not more than seven percent
14 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is
15 packaged in a container not larger than three hundred seventy-five
16 (375) milliliters. Such term shall include but not be limited to
17 the beverage popularly known as a "wine cooler";

18 34. "Mixed beverages" means one or more servings of a beverage
19 composed in whole or part of an alcoholic beverage in a sealed or
20 unsealed container of any legal size for consumption on the premises
21 where served or sold by the holder of a mixed beverage, beer and
22 wine, caterer, public event, charitable event or special event
23 license;

1 35. "Motion picture theater" means ~~a place~~ an establishment
2 which is licensed by Section 2-110 of this title to sell alcoholic
3 beverages by the individual drink and where motion pictures are
4 exhibited, and to which the general public is admitted, ~~but does not~~
5 ~~include a place where meals, as defined by this section, are served,~~
6 ~~if only persons over twenty-one (21) years of age are admitted;~~

7 36. "Nonresident seller" means any person licensed pursuant to
8 Section ~~47~~ 2-135 of this ~~act~~ title;

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

12 38. "Occupation" as used in connection with "occupation tax"
13 means the sites occupied as the places of business of the
14 manufacturers, wholesalers, beer distributors, retailers, mixed
15 beverage licensees, on-premises beer and wine licensees, bottle
16 clubs, caterers, public event and special event licensees;

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

19 40. "Package store" means any sole proprietor or partnership
20 that qualifies to sell wine, beer and/or spirits for off-premise
21 consumption and that is not a grocery store, convenience store or
22 drug store, or other retail outlet that is not permitted to sell
23 wine or beer for off-premise consumption;

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

3 42. "Person" means an individual, any type of partnership,
4 corporation, association, limited liability company or any
5 individual involved in the legal structure of any such business
6 entity;

7 43. "Premises" means the grounds and all buildings and
8 appurtenances pertaining to the grounds including any adjacent
9 premises if under the direct or indirect control of the licensee and
10 the rooms and equipment under the control of the licensee and used
11 in connection with or in furtherance of the business covered by a
12 license. Provided that the ABLE Commission shall have the authority
13 to designate areas to be excluded from the licensed premises solely
14 for the purpose of:

15 a. allowing the presence and consumption of alcoholic
16 beverages by private parties which are closed to the
17 general public, or

18 b. allowing the services of a caterer serving alcoholic
19 beverages provided by a private party.

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

23 44. "Private event" means a social gathering or event attended
24 by invited guests who share a common cause, membership, business or

1 task and have a prior established relationship. For purposes of
2 this definition, advertisement for general public attendance or
3 sales of tickets to the general public shall not constitute a
4 private event;

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

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

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

20 48. "Restaurant" means an establishment that is licensed to
21 sell alcoholic beverages by the individual drink for on-premises
22 consumption and where food is prepared and sold for immediate
23 consumption on the premises;

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

4 50. "Retailer" means a package store, grocery store,
5 convenience store or drug store licensed to sell alcoholic beverages
6 for off-premise consumption pursuant to a Retail Spirits License,
7 Retail Wine License or Retail Beer License;

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

16 52. "Short_order food" means food other than full meals
17 including but not limited to sandwiches, soups and salads. Provided
18 that popcorn, chips and other similar snack food shall not be
19 considered "short_order food";

20 53. "Small brewer" means a brewer who manufactures less than
21 twenty-five thousand (25,000) barrels of beer annually pursuant to a
22 validly issued Small Brewer License hereunder;

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

4 55. "Small farm winery" means a wine-making establishment that
5 does not annually produce for sale more than fifteen thousand
6 (15,000) gallons of wine as reported on the United States Department
7 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of
8 Wine Premises Operations (TTB Form 5120.17);

9 56. "Sparkling wine" means champagne or any artificially
10 carbonated wine;

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

14 58. "Spirits" means any beverage other than wine or beer, which
15 contains more than one-half of one percent (1/2 of 1%) alcohol
16 measured by volume, and obtained by distillation, whether or not
17 mixed with other substances in solution and includes those products
18 known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and
19 fortified wines and similar compounds, but shall not include any
20 alcohol liquid completely denatured in accordance with the Acts of
21 Congress and regulations pursuant thereto;

22 59. "Strong beer" means beer which, prior to the effective date
23 of this act, was distributed pursuant to the Oklahoma Alcoholic
24

1 Beverage Control Act, Section 501 et seq. of Title 37 of the
2 Oklahoma Statutes;

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

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

7 62. "Territory" means a geographic region with a specified
8 boundary;

9 63. "Wine and spirits wholesaler" or "wine and spirits
10 distributor" means and includes any sole proprietorship or
11 partnership licensed to distribute wine and spirits in the state.
12 The term "wholesaler", as used in this act, shall be construed to
13 refer to a wine and spirits wholesaler; and

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

21 Words in the plural include the singular, and vice versa, and
22 words imparting the masculine gender include the feminine, as well
23 as persons and licensees as defined in this section.

24

1 SECTION 6. REPEALER 37 O.S. 2011, Section 163.2, as
2 amended by Section 1 of this act, is hereby repealed.
3 SECTION 7. REPEALER 37 O.S. 2011, Section 163.25, as
4 amended by Section 2 of this act, is hereby repealed.
5 SECTION 8. REPEALER 37 O.S. 2011, Section 506, as last
6 amended by Section 3 of this act, is hereby repealed.
7 SECTION 9. REPEALER 37 O.S. 2011, Section 521, as last
8 amended by Section 4 of this act, is hereby repealed.
9 SECTION 10. Sections 5, 6, 7, 8 and 9 of this act shall become
10 effective October 1, 2018.

11
12 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM,
13 dated 02/15/2017 - DO PASS, As Amended and Coauthored.
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