

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                               STATE OF OKLAHOMA

3                               2nd Session of the 56th Legislature (2018)

4   ENGROSSED SENATE  
5   BILL NO. 1333

By: Bice of the Senate

and

McEntire and McDugle of the  
House

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9  
10       An Act relating to alcoholic beverages; amending  
11       Section 3, Chapter 366, O.S.L. 2016, as amended by  
12       Section 5, Chapter 381, O.S.L. 2017 (37A O.S. Supp.  
13       2017, Section 1-103), which relates to the Alcoholic  
14       Beverage Control Act; modifying definition; updating  
15       statutory references; and providing an effective  
16       date.

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

17       SECTION 1.       AMENDATORY       Section 3, Chapter 366, O.S.L.  
18       2016, as amended by Section 5, Chapter 381, O.S.L. 2017 (37A O.S.  
19       Supp. 2017, Section 1-103), is amended to read as follows:

20       Section 1-103. As used in the Oklahoma Alcoholic Beverage  
21       Control Act:

22       1. "ABLE Commission" or "Commission" means the Alcoholic  
23       Beverage Laws Enforcement Commission;  
24

1        2. "Alcohol" means and includes hydrated oxide of ethyl, ethyl  
2 alcohol, ethanol or spirits of wine, from whatever source or by  
3 whatever process produced. It does not include wood alcohol or  
4 alcohol which has been denatured or produced as denatured in  
5 accordance with Acts of Congress and regulations promulgated  
6 thereunder;

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

11       4. "Applicant" means any individual, legal or commercial  
12 business entity, or any individual involved in any legal or  
13 commercial business entity allowed to hold any license issued in  
14 accordance with the Oklahoma Alcoholic Beverage Control Act;

15       5. "Beer" means any beverage of alcohol by volume and obtained  
16 by the alcoholic fermentation of an infusion or decoction of barley,  
17 or other grain, malt or similar products. "Beer" may or may not  
18 contain hops or other vegetable products. "Beer" includes, among  
19 other things, beer, ale, stout, lager beer, porter and other malt or  
20 brewed liquors, but does not include sake, known as Japanese rice  
21 wine;

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

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

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

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

15       10. "Brand extension" means:

16           a. after ~~the effective date of this act~~ October 1, 2018,  
17 any brand of beer introduced by a manufacturer in this  
18 state which either:

19           (1) incorporates all or a substantial part of the  
20 unique features of a preexisting brand of the  
21 same licensed manufacturer, or

22           (2) relies to a significant extent on the goodwill  
23 associated with the preexisting brand, or  
24

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

8                (1)   incorporates or incorporated all or a substantial  
9                    part of the unique features of a preexisting low-  
10                   point beer brand of the same licensed  
11                   manufacturer, or

12              (2)   relies or relied to a significant extent on the  
13                    goodwill associated with a preexisting low-point  
14                    beer brand;

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

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

23           13.   "Cider" means any alcoholic beverage obtained by the  
24   alcoholic fermentation of fruit juice, including but not limited to

1 flavored, sparkling or carbonated cider. For the purposes of the  
2 distribution of this product, cider may be distributed by either  
3 wine and spirits wholesalers or beer distributors;

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

8 15. "Convicted" and "conviction" mean and include a finding of  
9 guilt resulting from a plea of guilty or nolo contendere, the  
10 decision of a court or magistrate or the verdict of a jury,  
11 irrespective of the pronouncement of judgment or the suspension  
12 thereof;

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

14 17. "Distiller" means any person who produces spirits from any  
15 source or substance, or any person who brews or makes mash, wort or  
16 wash, fit for distillation or for the production of spirits (except  
17 a person making or using such material in the authorized production  
18 of wine or beer, or the production of vinegar by fermentation), or  
19 any person who by any process separates alcoholic spirits from any  
20 fermented substance, or any person who, making or keeping mash, wort  
21 or wash, has also in his or her possession or use a still;

22 18. "Distributor agreement" means the written agreement between  
23 the distributor and manufacturer as set forth in Section 3-108 of  
24 this title;

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

3        20. "Dual-strength beer" means a brand of beer that,  
4 immediately prior to ~~the effective date of this act~~ October 1, 2018,  
5 was being sold and distributed in this state:

6            a. as a low-point beer pursuant to the Low-Point Beer  
7 Distribution Act in effect immediately prior to ~~the~~  
8 ~~effective date of this act~~ October 1, 2018, and

9            b. as strong beer pursuant to the Alcoholic Beverage  
10 Control Act in effect immediately prior to ~~the~~  
11 ~~effective date of this act~~ October 1, 2018.

12        Dual-strength beer does not include a brand of beer that arose  
13 as a result of a brand extension as defined in this section;

14        21. "Fair market value" means the value in the subject  
15 territory covered by the written agreement with the distributor or  
16 wholesaler that would be determined in an arm's length transaction  
17 entered into without duress or threat of termination of the  
18 distributor's or wholesaler's rights and shall include all elements  
19 of value, including goodwill and going-concern value;

20        22. "Good cause" means:

21            a. failure by the distributor to comply with the material  
22 and reasonable provisions of a written agreement or  
23 understanding with the manufacturer, or  
24

1           b.     failure by the distributor to comply with the duty of  
2                   good faith;

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

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

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

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

22       27.   "Licensee" means any person holding a license under the  
23 Oklahoma Alcoholic Beverage Control Act, and any agent, servant or  
24 employee of such licensee while in the performance of any act or

1 duty in connection with the licensed business or on the licensed  
2 premises;

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

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

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

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

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

23 a. restricted by means of a locking device which requires  
24 the use of a key, magnetic card or similar device, or

1           b.     controlled at all times by the licensee;

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

11          34.   "Mixed beverages" means one or more servings of a beverage  
12 composed in whole or part of an alcoholic beverage in a sealed or  
13 unsealed container of any legal size for consumption on the premises  
14 where served or sold by the holder of a mixed beverage, beer and  
15 wine, caterer, public event, charitable event or special event  
16 license;

17          35.   "Motion picture theater" means an establishment which is  
18 licensed by Section 2-110 of this title to sell alcoholic beverages  
19 by the individual drink and where motion pictures are exhibited, and  
20 to which the general public is admitted;

21          36.   "Nonresident seller" means any person licensed pursuant to  
22 Section 2-135 of this title;

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

4        38. "Occupation" as used in connection with "occupation tax"  
5 means the sites occupied as the places of business of the  
6 manufacturers, wholesalers, beer distributors, retailers, mixed  
7 beverage licensees, on-premises beer and wine licensees, bottle  
8 clubs, caterers, public event and special event licensees;

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

11       40. "Package store" means any sole proprietor or partnership  
12 that qualifies to sell wine, beer and/or spirits for off-premise  
13 consumption and that is not a grocery store, convenience store or  
14 drug store, or other retail outlet that is not permitted to sell  
15 wine or beer for off-premise consumption;

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

18       42. "Person" means an individual, any type of partnership,  
19 corporation, association, limited liability company or any  
20 individual involved in the legal structure of any such business  
21 entity;

22       43. "Premises" means the grounds and all buildings and  
23 appurtenances pertaining to the grounds including any adjacent  
24 premises if under the direct or indirect control of the licensee and

1 the rooms and equipment under the control of the licensee and used  
2 in connection with or in furtherance of the business covered by a  
3 license. Provided that the ABLE Commission shall have the authority  
4 to designate areas to be excluded from the licensed premises solely  
5 for the purpose of:

6 a. allowing the presence and consumption of alcoholic  
7 beverages by private parties which are closed to the  
8 general public, or

9 b. allowing the services of a caterer serving alcoholic  
10 beverages provided by a private party.

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

14 44. "Private event" means a social gathering or event attended  
15 by invited guests who share a common cause, membership, business or  
16 task and have a prior established relationship. For purposes of  
17 this definition, advertisement for general public attendance or  
18 sales of tickets to the general public shall not constitute a  
19 private event;

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

22 46. "Rectifier" means any person who rectifies, purifies or  
23 refines spirits or wines by any process (other than by original and  
24 continuous distillation, or original and continuous processing, from

1 mash, wort, wash or other substance, through continuous closed  
2 vessels and pipes, until the production thereof is complete), and  
3 any person who, without rectifying, purifying or refining spirits,  
4 shall by mixing (except for immediate consumption on the premises  
5 where mixed) such spirits, wine or other liquor with any material,  
6 manufactures any spurious, imitation or compound liquors for sale,  
7 under the name of whiskey, brandy, rum, gin, wine, spirits, cordials  
8 or any other name;

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

11 48. "Restaurant" means an establishment that is licensed to  
12 sell alcoholic beverages by the individual drink for on-premises  
13 consumption and where food is prepared and sold for immediate  
14 consumption on the premises;

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

18 50. "Retailer" means a package store, grocery store,  
19 convenience store or drug store licensed to sell alcoholic beverages  
20 for off-premise consumption pursuant to a Retail Spirits License,  
21 Retail Wine License or Retail Beer License;

22 51. "Sale" means any transfer, exchange or barter in any manner  
23 or by any means whatsoever, and includes and means all sales made by  
24 any person, whether as principal, proprietor or as an agent, servant

1 or employee. The term "sale" is also declared to be and include the  
2 use or consumption in this state of any alcoholic beverage obtained  
3 within or imported from without this state, upon which the excise  
4 tax levied by the Oklahoma Alcoholic Beverage Control Act has not  
5 been paid or exempted;

6 52. "Short-order food" means food other than full meals  
7 including but not limited to sandwiches, soups and salads. Provided  
8 that popcorn, chips and other similar snack food shall not be  
9 considered "short-order food";

10 53. "Small brewer" means a brewer who manufactures less than  
11 ~~twenty-five thousand (25,000)~~ sixty-five thousand (65,000) barrels  
12 of beer annually pursuant to a validly issued Small Brewer License  
13 hereunder;

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

17 55. "Small farm winery" means a wine-making establishment that  
18 does not annually produce for sale more than fifteen thousand  
19 (15,000) gallons of wine as reported on the United States Department  
20 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of  
21 Wine Premises Operations (TTB Form 5120.17);

22 56. "Sparkling wine" means champagne or any artificially  
23 carbonated wine;  
24

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

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

12        59. "Strong beer" means beer which, prior to ~~the effective date~~  
13 ~~of this act~~ October 1, 2018, was distributed pursuant to the  
14 Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of  
15 Title 37 of the Oklahoma Statutes;

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

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

20        62. "Territory" means a geographic region with a specified  
21 boundary;

22        63. "Wine and spirits wholesaler" or "wine and spirits  
23 distributor" means and includes any sole proprietorship or  
24 partnership licensed to distribute wine and spirits in the state.

1 The term "wholesaler", as used in this act, shall be construed to  
2 refer to a wine and spirits wholesaler; and

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

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

13 SECTION 2. This act shall become effective October 1, 2018.

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15 COMMITTEE REPORT BY: COMMITTEE ON BANKING AND BUSINESS, dated  
16 04/03/2018 - DO PASS, As Coauthored.

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