

1 solid, patented or not, containing alcohol, spirits, wine or beer
2 and capable of being consumed as a beverage by human beings;

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

7 5. "Beer" means any beverage of alcohol by volume and obtained
8 by the alcoholic fermentation of an infusion or decoction of barley,
9 or other grain, malt or similar products. "Beer" may or may not
10 contain hops or other vegetable products. "Beer" includes, among
11 other things, beer, ale, stout, lager beer, porter and other malt or
12 brewed liquors, but does not include sake, known as Japanese rice
13 wine;

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

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

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

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

7 10. "Brand extension" means:

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

11 (1) incorporates all or a substantial part of the
12 unique features of a preexisting brand of the
13 same licensed manufacturer, or

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

16 b. any brand of beer that a manufacturer, the majority of
17 whose total volume of all brands of beer distributed
18 in this state by such manufacturer on January 1, 2016,
19 was distributed as low-point beer, desires to sell,
20 introduces, begins selling or theretofore has sold and
21 desires to continue selling a strong beer in this
22 state which either:

23 (1) incorporates or incorporated all or a substantial
24 part of the unique features of a preexisting low-

1 point beer brand of the same licensed
2 manufacturer, or

3 (2) relies or relied to a significant extent on the
4 goodwill associated with a preexisting low-point
5 beer brand;

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

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

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

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

23 15. "Convicted" and "conviction" mean and include a finding of
24 guilt resulting from a plea of guilty or nolo contendere, the

1 decision of a court or magistrate or the verdict of a jury,
2 irrespective of the pronouncement of judgment or the suspension
3 thereof;

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

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

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

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

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

21 a. as a low-point beer pursuant to the Low-Point Beer
22 Distribution Act in effect immediately prior to ~~the~~
23 ~~effective date of this act~~ October 1, 2018, and
24

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

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

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

12 22. "Good cause" means:

13 a. failure by the distributor to comply with the material
14 and reasonable provisions of a written agreement or
15 understanding with the manufacturer, or

16 b. failure by the distributor to comply with the duty of
17 good faith;

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

22 24. "Grocery store" means a person primarily engaged in
23 retailing a general line of food, such as canned or frozen foods,
24

1 fresh fruits and vegetables, and fresh and prepared meats, fish and
2 poultry;

3 25. "Hotel" or "motel" means an establishment which is licensed
4 to sell alcoholic beverages by the individual drink and which
5 contains guestroom accommodations with respect to which the
6 predominant relationship existing between the occupants thereof and
7 the owner or operator of the establishment is that of innkeeper and
8 guest. For purposes of this section, the existence of other legal
9 relationships as between some occupants and the owner or operator
10 thereof shall be immaterial;

11 26. "Individual drink" means:

- 12 a. an alcoholic beverage of any size containing no more
13 than two (2) ounces of any type of distilled liquor or
14 spirits,
- 15 b. a wine beverage containing no more than eight (8)
16 ounces of wine or a bottle provided and sealed by the
17 winery which is intended for a single serving, or
- 18 c. a beer beverage containing no more than sixteen (16)
19 fluid ounces of beer or a bottle provided and sealed
20 by the brewer which is intended for a single serving;

21 27. "Legal newspaper" means a newspaper meeting the requisites
22 of a newspaper for publication of legal notices as prescribed in
23 Sections 101 through 114 of Title 25 of the Oklahoma Statutes;
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1 ~~27.~~ 28. "Licensee" means any person holding a license under the
2 Oklahoma Alcoholic Beverage Control Act, and any agent, servant or
3 employee of such licensee while in the performance of any act or
4 duty in connection with the licensed business or on the licensed
5 premises;

6 ~~28.~~ 29. "Low-point beer" shall mean any beverages containing
7 more than one-half of one percent (1/2 of 1%) alcohol by volume, and
8 not more than three and two-tenths percent (3.2%) alcohol by weight,
9 including but not limited to, beer or cereal malt beverages obtained
10 by the alcoholic fermentation of an infusion by barley or other
11 grain, malt or similar products;

12 ~~29.~~ 30. "Manufacturer" means a brewer, distiller, winemaker,
13 rectifier or bottler of any alcoholic beverage and its subsidiaries,
14 affiliates and parent companies;

15 ~~30.~~ 31. "Manufacturer's agent" means a salaried or commissioned
16 salesperson who is the agent authorized to act on behalf of the
17 manufacturer or nonresident seller in the state;

18 ~~31.~~ 32. "Meals" means foods commonly ordered at lunch or dinner
19 and at least part of which is cooked on the licensed premises and
20 requires the use of dining implements for consumption. Provided,
21 that the service of only food such as appetizers, sandwiches, salads
22 or desserts shall not be considered "meals";
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24

1 ~~32.~~ 33. "Mini-bar" means a closed container, either
2 refrigerated in whole or in part, or nonrefrigerated, and access to
3 the interior of which is:

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

6 b. controlled at all times by the licensee;

7 ~~33.~~ 34. "Mixed beverage cooler" means any beverage, by whatever
8 name designated, consisting of an alcoholic beverage and fruit or
9 vegetable juice, fruit or vegetable flavorings, dairy products or
10 carbonated water containing more than one-half of one percent (1/2
11 of 1%) of alcohol measured by volume but not more than seven percent
12 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is
13 packaged in a container not larger than three hundred seventy-five
14 (375) milliliters. Such term shall include but not be limited to
15 the beverage popularly known as a "wine cooler";

16 ~~34.~~ 35. "Mixed beverages" means one or more servings of a
17 beverage composed in whole or part of an alcoholic beverage in a
18 sealed or unsealed container of any legal size for consumption on
19 the premises where served or sold by the holder of a mixed beverage,
20 beer and wine, caterer, public event, charitable event or special
21 event license;

22 ~~35.~~ 36. "Motion picture theater" means an establishment which
23 is licensed by Section 2-110 of this title to sell alcoholic
24

1 beverages by the individual drink and where motion pictures are
2 exhibited, and to which the general public is admitted;

3 ~~36.~~ 37. "Nonresident seller" means any person licensed pursuant
4 to Section 2-135 of this title;

5 ~~37.~~ 38. "Retail salesperson" means a salesperson soliciting
6 orders from and calling upon retail alcoholic beverage stores with
7 regard to his or her product;

8 ~~38.~~ 39. "Occupation" as used in connection with "occupation
9 tax" means the sites occupied as the places of business of the
10 manufacturers, wholesalers, beer distributors, retailers, mixed
11 beverage licensees, on-premises beer and wine licensees, bottle
12 clubs, caterers, public event and special event licensees;

13 ~~39.~~ 40. "Original package" means any container of alcoholic
14 beverage filled and stamped or sealed by the manufacturer;

15 ~~40.~~ 41. "Package store" means any sole proprietor or
16 partnership that qualifies to sell wine, beer and/or spirits for
17 off-premise consumption and that is not a grocery store, convenience
18 store or drug store, or other retail outlet that is not permitted to
19 sell wine or beer for off-premise consumption;

20 ~~41.~~ 42. "Patron" means any person, customer or visitor who is
21 not employed by a licensee or who is not a licensee;

22 ~~42.~~ 43. "Person" means an individual, any type of partnership,
23 corporation, association, limited liability company or any
24

1 individual involved in the legal structure of any such business
2 entity;

3 ~~43.~~ 44. "Premises" means the grounds and all buildings and
4 appurtenances pertaining to the grounds including any adjacent
5 premises if under the direct or indirect control of the licensee and
6 the rooms and equipment under the control of the licensee and used
7 in connection with or in furtherance of the business covered by a
8 license. Provided that the ABLE Commission shall have the authority
9 to designate areas to be excluded from the licensed premises solely
10 for the purpose of:

- 11 a. allowing the presence and consumption of alcoholic
12 beverages by private parties which are closed to the
13 general public, or
- 14 b. allowing the services of a caterer serving alcoholic
15 beverages provided by a private party.

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

19 ~~44.~~ 45. "Private event" means a social gathering or event
20 attended by invited guests who share a common cause, membership,
21 business or task and have a prior established relationship. For
22 purposes of this definition, advertisement for general public
23 attendance or sales of tickets to the general public shall not
24 constitute a private event;

1 ~~45.~~ 46. "Public event" means any event that can be attended by
2 the general public;

3 ~~46.~~ 47. "Rectifier" means any person who rectifies, purifies or
4 refines spirits or wines by any process (other than by original and
5 continuous distillation, or original and continuous processing, from
6 mash, wort, wash or other substance, through continuous closed
7 vessels and pipes, until the production thereof is complete), and
8 any person who, without rectifying, purifying or refining spirits,
9 shall by mixing (except for immediate consumption on the premises
10 where mixed) such spirits, wine or other liquor with any material,
11 manufactures any spurious, imitation or compound liquors for sale,
12 under the name of whiskey, brandy, rum, gin, wine, spirits, cordials
13 or any other name;

14 ~~47.~~ 48. "Regulation" or "rule" means a formal rule of general
15 application promulgated by the ABLE Commission as herein required;

16 ~~48.~~ 49. "Restaurant" means an establishment that is licensed to
17 sell alcoholic beverages by the individual drink for on-premises
18 consumption and where food is prepared and sold for immediate
19 consumption on the premises;

20 ~~49.~~ 50. "Retail container for spirits and wines" means an
21 original package of any capacity approved by the United States
22 Bureau of Alcohol, Tobacco and Firearms;

23 ~~50.~~ 51. "Retailer" means a package store, grocery store,
24 convenience store or drug store licensed to sell alcoholic beverages

1 for off-premise consumption pursuant to a Retail Spirits License,
2 Retail Wine License or Retail Beer License;

3 ~~51.~~ 52. "Sale" means any transfer, exchange or barter in any
4 manner or by any means whatsoever, and includes and means all sales
5 made by any person, whether as principal, proprietor or as an agent,
6 servant or employee. The term "sale" is also declared to be and
7 include the use or consumption in this state of any alcoholic
8 beverage obtained within or imported from without this state, upon
9 which the excise tax levied by the Oklahoma Alcoholic Beverage
10 Control Act has not been paid or exempted;

11 ~~52.~~ 53. "Short-order food" means food other than full meals
12 including but not limited to sandwiches, soups and salads. Provided
13 that popcorn, chips and other similar snack food shall not be
14 considered "short-order food";

15 ~~53.~~ 54. "Small brewer" means a brewer who manufactures less
16 than ~~twenty-five thousand (25,000)~~ sixty-five thousand (65,000)
17 barrels of beer annually pursuant to a validly issued Small Brewer
18 License hereunder;

19 ~~54.~~ 55. "Small farm wine" means a wine that is produced by a
20 small farm winery with seventy-five percent (75%) or more Oklahoma-
21 grown grapes, berries, other fruits, honey or vegetables;

22 ~~55.~~ 56. "Small farm winery" means a wine-making establishment
23 that does not annually produce for sale more than fifteen thousand
24 (15,000) gallons of wine as reported on the United States Department

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

3 ~~56.~~ 57. "Sparkling wine" means champagne or any artificially
4 carbonated wine;

5 ~~57.~~ 58. "Special event" means an entertainment, recreation or
6 marketing event that occurs at a single location on an irregular
7 basis and at which alcoholic beverages are sold;

8 ~~58.~~ 59. "Spirits" means any beverage other than wine or beer,
9 which contains more than one-half of one percent (1/2 of 1%) alcohol
10 measured by volume, and obtained by distillation, whether or not
11 mixed with other substances in solution and includes those products
12 known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and
13 fortified wines and similar compounds, but shall not include any
14 alcohol liquid completely denatured in accordance with the Acts of
15 Congress and regulations pursuant thereto;

16 ~~59.~~ 60. "Strong beer" means beer which, prior to ~~the effective~~
17 ~~date of this act~~ October 1, 2018, was distributed pursuant to the
18 Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of
19 Title 37 of the Oklahoma Statutes;

20 ~~60.~~ 61. "Successor manufacturer" means a primary source of
21 supply, a brewer or an importer that acquires rights to a beer brand
22 from a predecessor manufacturer;

23 ~~61.~~ 62. "Tax Commission" means the Oklahoma Tax Commission;
24

1 ~~62.~~ 63. "Territory" means a geographic region with a specified
2 boundary;

3 ~~63.~~ 64. "Wine and spirits wholesaler" or "wine and spirits
4 distributor" means and includes any sole proprietorship or
5 partnership licensed to distribute wine and spirits in the state.
6 The term "wholesaler", as used in this act, shall be construed to
7 refer to a wine and spirits wholesaler; and

8 ~~64.~~ 65. "Wine" means and includes any beverage containing more
9 than one-half of one percent (1/2 of 1%) alcohol by volume and not
10 more than twenty-four percent (24%) alcohol by volume at sixty (60)
11 degrees Fahrenheit obtained by the fermentation of the natural
12 contents of fruits, vegetables, honey, milk or other products
13 containing sugar, whether or not other ingredients are added, and
14 includes vermouth and sake, known as Japanese rice wine.

15 Words in the plural include the singular, and vice versa, and
16 words imparting the masculine gender include the feminine, as well
17 as persons and licensees as defined in this section.

18 SECTION 2. AMENDATORY Section 142, Chapter 366, O.S.L.
19 2016 (37A O.S. Supp. 2017, Section 6-102), is amended to read as
20 follows:

21 Section 6-102. No licensee of the ABLE Commission shall:

22 1. Receive, possess or sell any alcoholic beverage except as
23 authorized by the Oklahoma Alcoholic Beverage Control Act and by the
24 license or permit which the licensee holds;

1 2. Employ any person under eighteen (18) years of age in the
2 selling of beer or wine or employ any person under twenty-one (21)
3 years of age in the selling of spirits. Provided:

4 a. a mixed beverage, beer and wine, caterer, public
5 event, special event, bottle club, retail wine or
6 retail beer licensee may employ servers or sales
7 clerks who are at least eighteen (18) years of age,
8 except persons under twenty-one (21) years of age may
9 not serve in designated bar or lounge areas, and

10 b. a mixed beverage, beer and wine, caterer, public
11 event, special event or bottle club licensee may
12 employ or hire musical bands who have musicians who
13 are under eighteen (18) years of age if each such
14 musician is either accompanied by a parent or legal
15 guardian or has on their person, to be made available
16 for inspection upon demand by any employee of the ABLE
17 Commission or law enforcement officer, a written,
18 notarized affidavit from the parent or legal guardian
19 giving the underage musician permission to perform in
20 designated bar or lounge areas;

21 3. Give any alcoholic beverage as a prize, premium or
22 consideration for any lottery, game of chance or skill or any type
23 of competition;
24

1 4. Use any of the following means or inducements to stimulate
2 the consumption of alcoholic beverages, including but not limited
3 to:

4 a. deliver more than two drinks to one person at one
5 time,

6 b. sell or offer to sell to any person or group of
7 persons any drinks at a price that is less than six
8 percent (6%) below the markup of the cost to the mixed
9 beverage licensee; provided, a mixed beverage licensee
10 shall be permitted to offer these drink specials on
11 any particular hour of any particular day and shall
12 not be required to offer these drink specials for an
13 entire calendar week or from open to close,

14 c. sell or offer to sell to any person an unlimited
15 number of drinks during any set period of time for a
16 fixed price, except at private functions not open to
17 the public,

18 d. sell or offer to sell drinks to any person or group of
19 persons on any one day or portion thereof at prices
20 less than those charged the general public on that
21 day, except at private functions not open to the
22 public,

23 e. increase the volume of alcoholic beverages contained
24 in a drink without increasing proportionately the

1 price regularly charged for such drink during the same
2 calendar week, ~~or~~

3 f. encourage or permit, on the licensed premises, any
4 game or contest which involves drinking or the
5 awarding of drinks as prizes,

6 g. serve a mixed drink with more than the amount of
7 alcohol defined as an individual drink, or

8 h. engage in the sale of any container of alcoholic
9 beverages larger than an individual drink unless
10 specifically exempted under the Oklahoma Alcoholic
11 Beverage Control Act.

12 Provided, that the provisions of this paragraph shall not
13 prohibit the advertising or offering of food or entertainment in
14 licensed establishments;

15 5. Permit or allow any patron or person to exit the licensed
16 premises with an open container of any alcoholic beverage.

17 Provided, this prohibition shall not be applicable to closed
18 original containers of alcoholic beverages which are carried from
19 the licensed premises of a bottle club by a patron, closed original
20 wine containers removed from the premises of restaurants, hotels and
21 motels, or to closed original containers of alcoholic beverages
22 transported to and from the place of business of a licensed caterer
23 by the caterer or an employee of the caterer;

1 6. Serve or sell alcoholic beverages with an expired license
2 issued by the ABLE Commission; or

3 7. Permit any person to be drunk or intoxicated on the
4 licensee's licensed premises.

5 SECTION 3. This act shall become effective October 1, 2018.

6 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
7 February 8, 2018 - DO PASS AS AMENDED
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