

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1333

By: Bice

6 AS INTRODUCED

7 An Act relating to alcoholic beverages; amending
8 Section 3, Chapter 366, O.S.L. 2016, as amended by
9 Section 5, Chapter 381, O.S.L. 2017 and Section 142,
10 Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2017,
11 Sections 1-103 and 6-102), which relate to the
12 Alcoholic Beverage Control Act; modifying definitions
13 and defining terms; updating statutory references;
14 prohibiting sale or serving of beverages exceeding
15 certain size; and providing an effective date.

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

15 SECTION 1. AMENDATORY Section 3, Chapter 366, O.S.L.
16 2016, as amended by Section 5, Chapter 381, O.S.L. 2017 (37A O.S.
17 Supp. 2017, Section 1-103), is amended to read as follows:

18 Section 1-103. As used in the Oklahoma Alcoholic Beverage
19 Control Act:

20 1. "ABLE Commission" or "Commission" means the Alcoholic
21 Beverage Laws Enforcement Commission;

22 2. "Alcohol" means and includes hydrated oxide of ethyl, ethyl
23 alcohol, ethanol or spirits of wine, from whatever source or by
24 whatever process produced. It does not include wood alcohol or

1 alcohol which has been denatured or produced as denatured in
2 accordance with Acts of Congress and regulations promulgated
3 thereunder;

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

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

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

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

21 7. "Beer distributor" means and includes any person licensed to
22 distribute beer for retail sale in the state, but does not include a
23 holder of a small brewer self-distribution license or brewpub self-

24

1 distribution license. The term "distributor", as used in this act,
2 shall be construed to refer to a beer distributor;

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

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

12 10. "Brand extension" means:

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

16 (1) incorporates all or a substantial part of the
17 unique features of a preexisting brand of the
18 same licensed manufacturer, or

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

21 b. any brand of beer that a manufacturer, the majority of
22 whose total volume of all brands of beer distributed
23 in this state by such manufacturer on January 1, 2016,
24 was distributed as low-point beer, desires to sell,

1 introduces, begins selling or theretofore has sold and
2 desires to continue selling a strong beer in this
3 state which either:

4 (1) incorporates or incorporated all or a substantial
5 part of the unique features of a preexisting low-
6 point beer brand of the same licensed
7 manufacturer, or

8 (2) relies or relied to a significant extent on the
9 goodwill associated with a preexisting low-point
10 beer brand;

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

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

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

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

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

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

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

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

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

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

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

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

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

18 22. "Good cause" means:

- 19 a. failure by the distributor to comply with the material
20 and reasonable provisions of a written agreement or
21 understanding with the manufacturer, or
22 b. failure by the distributor to comply with the duty of
23 good faith;
24

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

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

9 25. "Hotel" or "motel" means an establishment which is licensed
10 to sell alcoholic beverages by the individual drink and which
11 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 26. "Individual drink" means:

18 a. an alcoholic beverage of any size containing no more
19 than two (2) ounces of any type of distilled liquor or
20 spirits,

21 b. a wine beverage containing no more than eight (8)
22 ounces of wine or a bottle provided and sealed by the
23 winery which is intended for a single serving, or
24

1 c. a beer beverage containing no more than sixteen (16)
2 fluid ounces of beer or a bottle provided and sealed
3 by the brewer which is intended for a single serving;

4 27. "Legal newspaper" means a newspaper meeting the requisites
5 of a newspaper for publication of legal notices as prescribed in
6 Sections 101 through 114 of Title 25 of the Oklahoma Statutes;

7 ~~27.~~ 28. "Licensee" means any person holding a license under the
8 Oklahoma Alcoholic Beverage Control Act, and any agent, servant or
9 employee of such licensee while in the performance of any act or
10 duty in connection with the licensed business or on the licensed
11 premises;

12 ~~28.~~ 29. "Low-point beer" shall mean any beverages containing
13 more than one-half of one percent (1/2 of 1%) alcohol by volume, and
14 not more than three and two-tenths percent (3.2%) alcohol by weight,
15 including but not limited to, beer or cereal malt beverages obtained
16 by the alcoholic fermentation of an infusion by barley or other
17 grain, malt or similar products;

18 ~~29.~~ 30. "Manufacturer" means a brewer, distiller, winemaker,
19 rectifier or bottler of any alcoholic beverage and its subsidiaries,
20 affiliates and parent companies;

21 ~~30.~~ 31. "Manufacturer's agent" means a salaried or commissioned
22 salesperson who is the agent authorized to act on behalf of the
23 manufacturer or nonresident seller in the state;

1 ~~31.~~ 32. "Meals" means foods commonly ordered at lunch or dinner
2 and at least part of which is cooked on the licensed premises and
3 requires the use of dining implements for consumption. Provided,
4 that the service of only food such as appetizers, sandwiches, salads
5 or desserts shall not be considered "meals";

6 ~~32.~~ 33. "Mini-bar" means a closed container, either
7 refrigerated in whole or in part, or nonrefrigerated, and access to
8 the interior of which is:

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

12 ~~33.~~ 34. "Mixed beverage cooler" means any beverage, by whatever
13 name designated, consisting of an alcoholic beverage and fruit or
14 vegetable juice, fruit or vegetable flavorings, dairy products or
15 carbonated water containing more than one-half of one percent (1/2
16 of 1%) of alcohol measured by volume but not more than seven percent
17 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is
18 packaged in a container not larger than three hundred seventy-five
19 (375) milliliters. Such term shall include but not be limited to
20 the beverage popularly known as a "wine cooler";

21 ~~34.~~ 35. "Mixed beverages" means one or more servings of a
22 beverage composed in whole or part of an alcoholic beverage in a
23 sealed or unsealed container of any legal size for consumption on
24 the premises where served or sold by the holder of a mixed beverage,

1 beer and wine, caterer, public event, charitable event or special
2 event license;

3 ~~35.~~ 36. "Motion picture theater" means an establishment which
4 is licensed by Section 2-110 of this title to sell alcoholic
5 beverages by the individual drink and where motion pictures are
6 exhibited, and to which the general public is admitted;

7 ~~36.~~ 37. "Nonresident seller" means any person licensed pursuant
8 to Section 2-135 of this title;

9 ~~37.~~ 38. "Retail salesperson" means a salesperson soliciting
10 orders from and calling upon retail alcoholic beverage stores with
11 regard to his or her product;

12 ~~38.~~ 39. "Occupation" as used in connection with "occupation
13 tax" 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.~~ 40. "Original package" means any container of alcoholic
18 beverage filled and stamped or sealed by the manufacturer;

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

1 ~~41.~~ 42. "Patron" means any person, customer or visitor who is
2 not employed by a licensee or who is not a licensee;

3 ~~42.~~ 43. "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.~~ 44. "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.~~ 45. "Private event" means a social gathering or event
24 attended by invited guests who share a common cause, membership,

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

5 ~~45.~~ 46. "Public event" means any event that can be attended by
6 the general public;

7 ~~46.~~ 47. "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.~~ 48. "Regulation" or "rule" means a formal rule of general
19 application promulgated by the ABLE Commission as herein required;

20 ~~48.~~ 49. "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.~~ 50. "Retail container for spirits and wines" means an
2 original package of any capacity approved by the United States
3 Bureau of Alcohol, Tobacco and Firearms;

4 ~~50.~~ 51. "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.~~ 52. "Sale" means any transfer, exchange or barter in any
9 manner or by any means whatsoever, and includes and means all sales
10 made by any person, whether as principal, proprietor or as an agent,
11 servant or employee. The term "sale" is also declared to be and
12 include the use or consumption in this state of any alcoholic
13 beverage obtained within or imported from without this state, upon
14 which the excise tax levied by the Oklahoma Alcoholic Beverage
15 Control Act has not been paid or exempted;

16 ~~52.~~ 53. "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.~~ 54. "Small brewer" means a brewer who manufactures less
21 than ~~twenty-five thousand (25,000)~~ sixty-five thousand (65,000)
22 barrels of beer annually pursuant to a validly issued Small Brewer
23 License hereunder;

1 ~~54.~~ 55. "Small farm wine" means a wine that is produced by a
2 small farm winery with seventy-five percent (75%) or more Oklahoma-
3 grown grapes, berries, other fruits, honey or vegetables;

4 ~~55.~~ 56. "Small farm winery" means a wine-making establishment
5 that 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.~~ 57. "Sparkling wine" means champagne or any artificially
10 carbonated wine;

11 ~~57.~~ 58. "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.~~ 59. "Spirits" means any beverage other than wine or beer,
15 which 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.~~ 60. "Strong beer" means beer which, prior to ~~the effective~~
23 ~~date of this act~~ October 1, 2018, was distributed pursuant to the
24

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

3 ~~60.~~ 61. "Successor manufacturer" means a primary source of
4 supply, a brewer or an importer that acquires rights to a beer brand
5 from a predecessor manufacturer;

6 ~~61.~~ 62. "Tax Commission" means the Oklahoma Tax Commission;

7 ~~62.~~ 63. "Territory" means a geographic region with a specified
8 boundary;

9 ~~63.~~ 64. "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.~~ 65. "Wine" means and includes any beverage containing more
15 than one-half of one percent (1/2 of 1%) alcohol by volume and not
16 more 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 2. AMENDATORY Section 142, Chapter 366, O.S.L.
2 2016 (37A O.S. Supp. 2017, Section 6-102), is amended to read as
3 follows:

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

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

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

11 a. a mixed beverage, beer and wine, caterer, public
12 event, special event, bottle club, retail wine or
13 retail beer licensee may employ servers or sales
14 clerks who are at least eighteen (18) years of age,
15 except persons under twenty-one (21) years of age may
16 not serve in designated bar or lounge areas, and

17 b. a mixed beverage, beer and wine, caterer, public
18 event, special event or bottle club licensee may
19 employ or hire musical bands who have musicians who
20 are under eighteen (18) years of age if each such
21 musician is either accompanied by a parent or legal
22 guardian or has on their person, to be made available
23 for inspection upon demand by any employee of the ABLE
24 Commission or law enforcement officer, a written,

1 notarized affidavit from the parent or legal guardian
2 giving the underage musician permission to perform in
3 designated bar or lounge areas;

4 3. Give any alcoholic beverage as a prize, premium or
5 consideration for any lottery, game of chance or skill or any type
6 of competition;

7 4. Use any of the following means or inducements to stimulate
8 the consumption of alcoholic beverages, including but not limited
9 to:

10 a. deliver more than two drinks to one person at one
11 time,

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

20 c. sell or offer to sell to any person an unlimited
21 number of drinks during any set period of time for a
22 fixed price, except at private functions not open to
23 the public,
24

- 1 d. sell or offer to sell drinks to any person or group of
2 persons on any one day or portion thereof at prices
3 less than those charged the general public on that
4 day, except at private functions not open to the
5 public,
- 6 e. increase the volume of alcoholic beverages contained
7 in a drink without increasing proportionately the
8 price regularly charged for such drink during the same
9 calendar week, ~~or~~
- 10 f. encourage or permit, on the licensed premises, any
11 game or contest which involves drinking or the
12 awarding of drinks as prizes,
- 13 g. serve a mixed drink with more than the amount of
14 alcohol defined as an individual drink, or
- 15 h. engage in the sale of any container of alcoholic
16 beverages larger than an individual drink unless
17 specifically exempted under the Oklahoma Alcoholic
18 Beverage Control Act.

19 Provided, that the provisions of this paragraph shall not
20 prohibit the advertising or offering of food or entertainment in
21 licensed establishments;

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

24 Provided, this prohibition shall not be applicable to closed

1 original containers of alcoholic beverages which are carried from
2 the licensed premises of a bottle club by a patron, closed original
3 wine containers removed from the premises of restaurants, hotels and
4 motels, or to closed original containers of alcoholic beverages
5 transported to and from the place of business of a licensed caterer
6 by the caterer or an employee of the caterer;

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

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

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

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