

2nd

OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

April 30, 2018

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB 1173

By: Bice and Smalley of the Senate and Echols of the House

Title: Alcoholic beverages; modifying various provisions of the Alcoholic Beverage Control Act; wholesalers. Effective dates.

together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.
2. That the attached 2nd Conference Committee Substitute be adopted.

Respectfully submitted,

SENATE CONFEREES:

Bice

Daniels

Leewright

Brooks

Stanislawski

Pittman

Paxton

HOUSE CONFEREES:

Conference Committee on Rules

Senate Action _____ Date _____ House Action _____ Date _____

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED

SENATE BILL NO. 1173

By: Bice and Smalley of the
Senate

and

Echols of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to alcoholic beverages; amending Sections 4 and 13, Chapter 366, O.S.L. 2016, as amended by Sections 9 and 10, Chapter 364, O.S.L. 2017, Sections 37 and 58, Chapter 366, O.S.L. 2016, (37A O.S. Supp. 2017, Sections 1-104, 2-101, 2-125 and 2-146), which relate to the Oklahoma Alcoholic Beverage Control Act; granting certain authority to wine and spirits wholesaler; modifying powers and duties of ABLE Commission; specifying additional license fees; modifying items that may be stored in bonded warehouse with alcoholic beverages; specifying acts authorized by designating wine and spirits manufacturer's license or nonresident seller license; authorizing storage of certain beverages; allowing applicant for certain licenses to maintain other licenses under certain conditions; allowing certain license to be issued to limited liability company or partnership; providing effective dates; and declaring an emergency.

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

1 SECTION 1. AMENDATORY Section 4, Chapter 366, O.S.L.

2 2016, as amended by Section 9, Chapter 364, O.S.L. 2017 (37A O.S.
3 Supp. 2017, Section 1-104), is amended to read as follows:

4 Section 1-104. A. The Alcoholic Beverage Laws Enforcement
5 Commission created in Section 1 of Article XXVIII of the Oklahoma
6 Constitution is hereby re-created. The purpose of the Commission
7 shall be to enforce the alcoholic beverage laws of the state, and
8 the Commission shall have such power and authority to enforce such
9 laws, rules and regulations as shall be prescribed by the Oklahoma
10 Alcoholic Beverage Control Act.

11 B. The Commission shall consist of seven (7) members, to be
12 appointed by the Governor with the advice and consent of the State
13 Senate; provided, members serving on October 1, 2017, shall continue
14 to serve until such time as their terms would have expired pursuant
15 to the provisions of Section 1 of Article XXVIII of the Oklahoma
16 Constitution. Five of the members shall be at-large members
17 representing the lay citizenry. The remaining two members shall be
18 persons with law enforcement experience in this state. Any time
19 there is a vacancy on the Commission, the Governor shall appoint a
20 replacement, with the advice and consent of the State Senate, within
21 ninety (90) days.

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

1 D. No more than four members of the Commission shall be
2 appointed from the same political party. No more than two members
3 of the Commission shall be appointed from the same federal
4 congressional district.

5 E. No member of the Commission shall hold any license
6 authorized by the Oklahoma Alcoholic Beverage Control Act, or have
7 any interest in any capacity, in the manufacture, sale, distribution
8 or transportation of alcoholic beverages.

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

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

13 H. The State of Oklahoma shall take all necessary steps to
14 ensure the timely implementation of Enrolled Senate Joint Resolution
15 No. 68 of the 2nd Session of the 55th Oklahoma Legislature, if
16 approved by the voters. Consistent with this objective, the ABLE
17 Commission shall have the power to issue interim licenses prior to
18 October 1, 2018, as follows:

19 1. Except for the sale of wine or beer to the public, an
20 interim license shall allow all qualified retail wine and retail
21 beer licensees to perform all activities permissible under a full
22 license including but not limited to purchasing, stocking and
23 storing the wine and/or full-strength beer prior to October 1, 2018.
24 In order to qualify for an interim license, the licensee must

1 satisfy all the requirements set forth in Article XXVIII A of the
2 Oklahoma Constitution and ~~this act~~ the Oklahoma Alcoholic Beverage
3 Control Act. ~~The~~ This interim license shall convert to a full
4 license on October 1, 2018;

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

9 3. An interim license shall allow all qualified wine and
10 spirits wholesalers and beer distributors to perform all activities
11 permissible under a full license including but not limited to
12 selling and delivering wine and/or full-strength beer to all
13 qualified retail wine and retail beer licensees. A wine and spirits
14 wholesaler that has been designated by a manufacturer as a
15 distributor of its wine or spirits may post those designated
16 products by line-item, consistent with Section 3-116.2 of this
17 title, on September 15, 2018, for sale effective October 1, 2018.

18 In order to qualify for an interim license, the wine and spirits
19 wholesaler and beer distributor must comply with the provisions set
20 forth in Article XXVIII A of the Oklahoma Constitution and ~~this act~~
21 the Oklahoma Alcoholic Beverage Control Act. The interim license
22 shall convert to a full license on October 1, 2018.

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

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

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

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

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

- 7 1. Brewer License..... \$1,250.00
- 8 2. Small Brewer License..... \$125.00
- 9 3. Distiller License..... \$3,125.00
- 10 4. Winemaker License..... \$625.00
- 11 5. Small Farm Winery License..... \$75.00
- 12 6. Rectifier License..... \$3,125.00
- 13 7. Wine and Spirits Wholesaler License..... \$3,000.00
- 14 8. Beer Distributor License..... \$750.00

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

- 17 a. Retail Spirits License for cities and
18 towns from 200 to 2,500 population..... \$305.00
- 19 b. Retail Spirits License for cities and
20 towns from 2,501 to 5,000 population..... \$605.00
- 21 c. Retail Spirits License for cities and
22 towns over 5,000 population..... \$905.00
- 23 10. Retail Wine License..... \$1,000.00
- 24 11. Retail Beer License..... \$500.00

1	12.	Mixed Beverage License.....	\$1,005.00
2		(initial license)	
3		\$905.00	
4		(renewal)	
5	13.	Mixed Beverage/Caterer Combination License.....	\$1,250.00
6	14.	On-Premises Beer and Wine License.....	\$500.00
7		(initial license)	
8		\$450.00	
9		(renewal)	
10	15.	Bottle Club License.....	\$1,000.00
11		(initial license)	
12		\$900.00	
13		(renewal)	
14	16.	Caterer License.....	\$1,005.00
15		(initial license)	
16		\$905.00	
17		(renewal)	
18	17.	Annual Special Event License.....	\$55.00
19	18.	Quarterly Special Event License.....	\$55.00
20	19.	Hotel Beverage License.....	\$1,005.00
21		(initial license)	
22		\$905.00	
23		(renewal)	
24	20.	Airline/Railroad Beverage License.....	\$1,005.00

1		(initial license)	
2		\$905.00	
3		(renewal)	
4	21.	Agent License.....	\$55.00
5	22.	Employee License.....	\$30.00
6	23.	Industrial License.....	\$23.00
7	24.	Carrier License.....	\$23.00
8	25.	Private Carrier License.....	\$23.00
9	26.	Bonded Warehouse License.....	\$190.00
10	27.	Storage License.....	\$23.00
11	28.	Nonresident 7 Seller License or Manufacturer's	
12		License.....	\$750.00
13	29.	Manufacturer's Agent License.....	\$55.00
14	30.	Sacramental Wine Supplier License.....	\$100.00
15	31.	Charitable Auction License.....	\$1.00
16	32.	Charitable Alcoholic Beverage License.....	\$55.00
17	33.	Winemaker Self-Distribution License.....	\$750.00
18	34.	Annual Public Event License.....	\$1,005.00
19	35.	One-Time Public Event License.....	\$255.00
20	36.	Small Brewer Self-Distribution License.....	\$750.00
21	37.	Brewpub License.....	\$1,005.00
22	38.	Brewpub Self-Distribution License.....	\$750.00
23	B. 1.	There shall be added to the initial or renewal fees for	
24		a Mixed Beverage License an administrative fee, which shall not be	

1 deemed to be a license fee, in the amount of Five Hundred Dollars
2 (\$500.00), which shall be paid at the same time and in the same
3 manner as the license fees prescribed by paragraph 10 of subsection
4 A of this section; provided, this fee shall not be assessed against
5 service organizations or fraternal beneficiary societies which are
6 exempt under Section 501(c)(19), (8) or (10) of the Internal Revenue
7 Code.

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

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

16 1. The license fee for a mixed beverage or bottle club license
17 for those service organizations or fraternal beneficiary societies
18 which are exempt under Section 501(c)(19), (8) or (10) of the
19 Internal Revenue Code shall be Five Hundred Dollars (\$500.00) per
20 year; and

21 2. The renewal fee for an airline/railroad beverage license
22 held by a railroad described in 49 U.S.C., Section 24301, shall be
23 One Hundred Dollars (\$100.00).
24

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

3 E. All licenses, except as otherwise provided, shall be valid
4 for one (1) year from date of issuance unless revoked or
5 surrendered. Provided, all employee licenses shall be valid for two
6 (2) years.

7 F. The holder of a license, issued by the ABLE Commission, for
8 a bottle club located in a county of this state where the sale of
9 alcoholic beverages by the individual drink for on-premises
10 consumption has been authorized, may exchange the bottle club
11 license for a mixed beverage license or an on-premises beer and wine
12 license and operate the licensed premises as a mixed beverage
13 establishment or an on-premises beer and wine establishment subject
14 to the provisions of the Oklahoma Alcoholic Beverage Control Act.
15 There shall be no additional fee for such exchange and the mixed
16 beverage license or on-premises beer and wine license issued shall
17 expire one (1) year from the date of issuance of the original bottle
18 club license.

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

- 21 1. Nonresident Seller or Manufacturer License..... \$2,500.00
22 2. Wine and Spirits Wholesaler License..... \$2,500.00
23 3. Beer Distributor..... \$1,000.00

24

4. Retail Spirits License for cities and towns
over 5,000 population..... \$250.00
5. Retail Spirits License for cities and towns
from 2,501 to 5,000 population..... \$200.00
6. Retail Spirits License for cities and towns
from 200 to 2,500 population..... \$150.00
7. Retail Wine License..... \$250.00
8. Retail Beer License..... \$250.00
9. Mixed Beverage License..... \$25.00
10. Mixed Beverage/Caterer Combination License..... \$25.00
11. Caterer License..... \$25.00
12. On-Premises Beer and Wine License..... \$25.00
13. Annual Public Event License..... \$25.00
14. Small Farm Winery License..... \$25.00
15. Small Brewer License..... \$35.00

The surcharge shall be paid concurrent with the licensee's annual licensing fee and, in addition to Five Dollars (\$5.00) of the employee license fee, shall be deposited in the Alcoholic Beverage Governance Revolving Fund established pursuant to Section 5-128 of this title.

H. Any license issued by the ABLE Commission under this title may be relied upon by other licensees as a valid license, and no other licensee shall have any obligation to independently determine the validity of such license or be held liable solely as a

1 consequence of another licensee's failure to maintain a valid
2 license.

3 SECTION 3. AMENDATORY Section 37, Chapter 366, O.S.L.
4 2016 (37A O.S. Supp. 2017, Section 2-125), is amended to read as
5 follows:

6 Section 2-125. A bonded warehouse license shall authorize the
7 holder thereof to receive and store alcoholic beverages and
8 nonalcoholic beverages for the holders of storage licenses on the
9 licensed premises of the bonded warehouse licensee. No goods, wares
10 or merchandise other than alcoholic beverages and nonalcoholic
11 beverages may be stored in the same bonded warehouse with alcoholic
12 beverages. The holder of a bonded warehouse license shall furnish
13 and file with the ABLE Commission a bond running to all bailers of
14 alcoholic beverages under proper storage licenses and their
15 assignees (including mortgagees or other bona fide lienholders)
16 conditioned upon faithful performance of the terms and conditions of
17 such bailments.

18 SECTION 4. AMENDATORY Section 58, Chapter 366, O.S.L.
19 2016 (37A O.S. Supp. 2017, Section 2-146), is amended to read as
20 follows:

21 Section 2-146. A. The ABLE Commission shall refuse to issue a
22 wine and spirits wholesaler, beer distributor, retail spirits,
23 retail wine or retail beer license, either on an original
24

1 application or a renewal application, if it has reasonable grounds
2 to believe and finds any of the following to be true:

3 1. Except in the case of a beer distributor, that the applicant
4 is not a citizen of the United States or is not a qualified elector
5 in this state, or has not been a continuous resident of this state
6 for the five (5) years next preceding the application for the
7 license;

8 2. That the applicant is under twenty-one (21) years of age;

9 3. That the applicant or any partner, or spouse of the
10 applicant or any partner, has been convicted of a felony;

11 4. That the applicant or any partner, or spouse of the
12 applicant or any partner, has been convicted of a violation of any
13 state or federal law relating to alcoholic beverages, has forfeited
14 a bond while any charge of such violation was pending, nor may any
15 license be granted for any purpose under the Oklahoma Alcoholic
16 Beverage Control Act to an Oklahoma resident, who has held or whose
17 spouse has held a Federal Liquor Stamp in Oklahoma before the
18 adoption of Article XXVIII A of the Oklahoma Constitution unless the
19 Liquor Stamp was granted for supplying alcoholic beverages to a
20 federal military installation, or was granted under the Oklahoma
21 Alcoholic Beverage Control Act;

22 5. That the applicant or any partner has, within twelve (12)
23 months next preceding the date of the application, violated any
24 provision of the Oklahoma Alcoholic Beverage Control Act or rule of

1 the ABLE Commission promulgated pursuant hereto. Provided, however,
2 that if the ABLE Commission has, during such twelve-month period,
3 suspended any license sought to be renewed, such renewal application
4 may be approved if the term of the suspension has been completed and
5 the applicant has complied with any special conditions imposed in
6 connection with the suspension;

7 6. That the applicant is not of good moral character, or that
8 the applicant is in the habit of using alcoholic beverages to
9 excess, or is mentally incapacitated. Provided, that the record in
10 any municipal court showing a conviction of violation of any
11 municipal ordinances or state statutes involving moral character or
12 public nuisance obtained after passage and approval of the Oklahoma
13 Alcoholic Beverage Control Act shall be received in evidence by the
14 ABLE Commission;

15 7. That the applicant does not own or have a written lease for
16 the premises for which a license is sought;

17 8. That the applicant, within twelve (12) months next preceding
18 the date of application, has been the holder of a license revoked
19 for cause;

20 9. That the applicant is not the real party in interest, or
21 intends to carry on the business authorized by the license as the
22 agent of another;

1 10. That the applicant, in the case of an application for
2 renewal of any license, would not be eligible for such license on a
3 first application;

4 11. That the applicant is a person who appoints or is a law
5 enforcement official or is an employee of the ABLE Commission;

6 12. That the proposed location of the licensed premises would
7 violate a valid municipal nondiscriminatory zoning ordinance;

8 13. That, in the case of an application for a wine and spirits
9 wholesaler license or beer distributor license, any manufacturer,
10 including an officer, director or principal stockholder thereof or
11 any partner, has any financial interest in the business to be
12 conducted under the license, unless otherwise permitted by law;

13 14. That the issuance of the license applied for would result
14 in a violation of any provision of the Oklahoma Alcoholic Beverage
15 Control Act;

16 15. That, in the case of an application for a wine and spirits
17 wholesaler or beer distributor license, the applicant or any
18 partner, or spouse of the applicant or any partner, is the holder or
19 partner of the holder of any other class of license issued under the
20 provisions of the Oklahoma Alcoholic Beverage Control Act, other
21 than an agent or employee license for employment by the applicant,
22 or a storage license, bonded warehouse license, carrier license or
23 private carrier license; provided, nothing shall prohibit a wine and
24 spirits wholesaler, who is otherwise qualified, from maintaining

1 beer distributor licenses in the state, nor a beer distributor, who
2 is otherwise qualified, from maintaining a wine and spirits
3 wholesaler license in the state;

4 16. That, in the case of an application for a retail spirits,
5 retail wine or retail beer license, the applicant or any partner is
6 the holder or partner of the holder, or employee of such holder of
7 any other class of license issued under the provisions of the
8 Oklahoma Alcoholic Beverage Control Act, other than a storage
9 license or an employee license for the proposed licensed premises of
10 the applicant, provided, nothing in this title shall prohibit an
11 applicant for a retail wine and/or retail beer license from
12 maintaining a separate mixed beverage, caterer, mixed
13 beverage/caterer combination license, and/or an on-premise beer and
14 wine license, if the retail wine and/or retail beer license is not
15 situated within or adjacent to the same physical space wherein the
16 on-premises license is maintained; or

17 17. That the applicant or any partner, spouse, employee or
18 other person affiliated with the applicant is not in compliance with
19 the tax laws of this state as required in Article XXVIII A of the
20 Oklahoma Constitution.

21 B. The provisions of this section shall not operate to prohibit
22 the issuance of a beer distributor license to a corporation or
23 partnership.
24

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

3 SECTION 6. Sections 2, 3 and 4 of this act shall become
4 effective October 1, 2018.

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

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