

OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

May 19, 2017

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB 646

By: Bice of the Senate and Mulready of the House

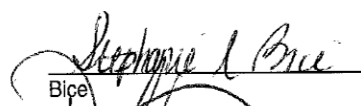
Title: Alcoholic beverages; sales; licensing. Effective date.

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:

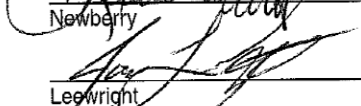
1. That the House recede from all Amendments.
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

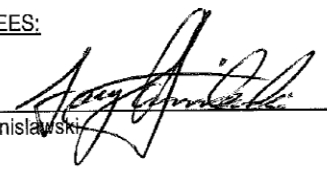
SENATE CONFEREES:


Bice

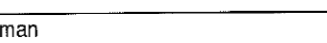

Newberry


Leewright


Daniels


Stanislawski


Sparks


Pittman

HOUSE CONFEREES:

Conference Committee on Business, Commerce and Tourism

Senate Action _____ Date _____ House Action _____ Date _____

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED

SENATE BILL NO. 646

By: Bice of the Senate

and

Mulready of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to alcoholic beverages; amending 37 O.S. 2011, Sections 163.11, as last amended by Section 1, Chapter 205, O.S.L. 2013, 163.18G, 163.18H, 163.20, 521, as last amended by Section 5 of Enrolled House Bill No. 1302 of the 1st Session of the 56th Oklahoma Legislature, and 554.1 and 554.2, as amended by Sections 15 and 16, Chapter 298, O.S.L. 2014 (37 O.S. Supp. 2016, Sections 163.11, 554.1 and 554.2), which relate to the sale, shipment, licensing, taxing and legal remedies associated with low-point beer and alcoholic beverages; providing that under certain circumstances certain actions shall not constitute violations of certain provisions of law, create liability or be subject to fines, orders, penalties or license revocations; deeming certain permits valid under certain conditions; exempting certain licensees from obligations to make certain independent determinations; providing that certain licenses may be relied upon by other licensees; amending Sections 3, 4, 13, 19, 20, 38, 78, 80, 81, 86, 101, 102, 135 and 144, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Sections 1-103, 1-104, 2-101, 2-107, 2-108, 2-126, 3-108, 3-110, 3-111, 3-116, 4-104, 4-105, 5-132 and 6-104), which relate to the sale, regulation, licensing, distribution, marketing and taxation of alcoholic beverages; modifying definitions; clarifying date; clarifying references; allowing for refrigeration of product on certain date; expanding eligibility for interim

1 licenses; limiting allowable sales to interim
2 licensees; providing that certain licenses may be
3 relied upon by other licensees; exempting certain
4 licensees from obligations to make certain
5 independent determinations; providing that under
6 certain circumstances certain actions shall not
7 create liability; modifying authorities of wine and
8 spirits wholesaler licensees; eliminating certain
9 exemption pertaining to storage licensee owning
10 multiple licensed establishments; modifying certain
11 limitation related to direct wine shipments;
12 clarifying certain dates; applying certain
13 distribution requirements and limitations on cider
14 manufacturers; requiring certain assignment of
15 exclusive rights to distribute under certain
16 conditions; establishing the rights and obligations
17 of cider manufacturers under certain conditions;
18 providing processes, requirements and limitations
19 related to manufacturers and nonresident sellers that
20 have not designated a wine or spirits wholesaler;
21 providing exemption to such processes, requirements
22 and limitations; providing price posting requirements
23 related to sales of products with no designated wine
24 and spirits wholesaler; providing exemption for
certain products; providing for severability of
certain provisions; providing price posting
requirements related to sales of products having a
designated wine and spirits wholesaler; clarifying
applicability; requiring certain periodic electronic
publications and distribution of price catalog to
certain entities; requiring certain content be
included in price catalog; limiting ability to modify
price catalog; providing timeline for when price
amendments become applicable; requiring certain
publication of price amendments; authorizing
additional types of representatives to submit labels
and fee payments as part of the brand label
registration process; requiring certain reimbursement
of representative within certain time period;
modifying prohibition on wine and spirits wholesaler
sales and deliveries on certain days and dates;
repealing 37 O.S. 2011, Sections 163.11, as last
amended by Section 1 of this act, 163.18G, as amended
by Section 2 of this act, 163.18H, as amended by
Section 3 of this act, 163.20, as amended by Section
4 of this act, 521, as last amended by Section 5 of
this act, 554.1, as last amended by Section 6 of this

1 act, and 554.2, as last amended by Section 7 of this
2 act, which relate to the sale, shipment, licensing
3 and taxing of, and legal remedies associated with,
4 low-point beer and alcoholic beverages; repealing
5 Section 1 of Enrolled House Bill No. 1540 of the 1st
6 Session of the 56th Oklahoma Legislature, which
7 relates to licensing; providing for codification; and
8 providing effective dates.

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

10 SECTION 1. AMENDATORY 37 O.S. 2011, Section 163.11, as
11 last amended by Section 1, Chapter 205, O.S.L. 2013 (37 O.S. Supp.
12 2016, Section 163.11), is amended to read as follows:

13 Section 163.11. A. It shall be unlawful for any person to
14 maintain or operate any place where low-point beer, as herein
15 defined, is sold for consumption on or off the premises without
16 first securing a permit issued by the district court clerk of the
17 county in which the premises are located.

18 B. 1. The person applying for a permit must file a verified
19 application every three (3) years stating that he or she has never
20 been convicted of violating any of the laws prohibiting the traffic
21 in any spirituous, vinous, fermented or malt liquors or the laws
22 related to the Uniform Controlled Dangerous Substances Act in this
23 state or another state or the United States, or of any of the
24 gambling laws of this state or another state or the United States,
within three (3) years immediately preceding the date of his or her
petition, or any of the laws commonly called "Prohibition Laws", or

1 had any permit or license to sell low-point beer revoked in any
2 county of this state within twelve (12) months.

3 2. A person who has been convicted of a felony shall not be
4 eligible for a permit unless the person received a pardon for the
5 felony or a period of ten (10) years has elapsed since the
6 completion of the sentence imposed for the felony.

7 C. No permit shall be issued to sell low-point beer for on-
8 premises consumption unless the person applying for such permit
9 shall have signed an affidavit stating that the location of the
10 building in which low-point beer is to be sold is not prohibited by
11 the provisions of Section 163.27 of this title.

12 D. A fee of One Hundred Fifty Dollars (\$150.00) shall be
13 charged for the issuance or renewal of such three-year permit, which
14 fee shall be deposited in the county court fund, in addition to
15 other fees required by law.

16 E. Upon petition being filed, the district court clerk shall
17 give fifteen (15) days' notice for an initial application, and it is
18 the applicant's responsibility to cause the same to be posted by the
19 entrance on the front of the building in which said low-point beer
20 is to be sold and to file proof of posting in such case; and a copy
21 of said notice shall also be mailed to the district attorney, the
22 sheriff and the chief of police or marshal of any city or town in
23 which the business is to be operated. The notice shall contain the
24 name of the applicant and the location of the place of business.

1 The initial permit shall be valid for a period of three (3) years
2 and shall expire if not renewed with proper showing required by
3 subsection B of this section, and upon payment of proper fees. A
4 permit may be renewed within ten (10) days of expiration, upon
5 proper application pursuant to subsection B of this section and
6 payment of the proper fees, but without the payment of any late
7 fees. Provided, however, that if a proper application under
8 subsection B of this section is filed within eleven (11) days but
9 not more than thirty (30) days after the expiration date of the
10 permit, upon payment of a fee of One Hundred Dollars (\$100.00) in
11 addition to the initial permit fee, the court clerk is authorized to
12 treat the application as one for renewal and to issue a renewal
13 permit to the applicant, if all requirements have otherwise been met
14 by the applicant. A renewal permit granted during the thirty-day
15 grace period shall become effective upon the date of its issuance by
16 the court clerk.

17 F. An application shall be denied upon any ground that would
18 require the permit to be revoked.

19 G. A person who has obtained a permit pursuant to this section
20 and who ceases to maintain or operate any place where low-point beer
21 is sold for consumption on or off the premises shall be entitled to
22 receive a refund of the permit fee from the district court clerk
23 prorated with respect to the amount of time remaining until
24 expiration of the permit, upon surrender of the existing permit to

1 the district court clerk. The manner and prorated refund shall be
2 prescribed by the Administrative Director of the Courts.

3 H. If there are no protests and the petition is sufficient on
4 its face, then the permit shall be granted by the district court
5 clerk. Provided, that if any citizen of the county files a written
6 protest setting forth objections, then the district court clerk
7 shall advise the chief judge who shall assign such petition to a
8 district judge or associate district judge for hearing.

9 I. The application for the permit must be verified and in
10 writing, contain the information above required, and must be set for
11 hearing on a date named in the notice required to be posted.

12 J. All testimony before the district court shall be under oath.

13 K. A judge of the district court, upon five (5) days' notice to
14 the person holding the permit, shall revoke the permit for any one
15 of the following reasons:

16 1. Drunkenness of the person holding the permit or permitting
17 any intoxicated person to loiter in or around his or her place of
18 business;

19 2. Person under the influence of drugs or any controlled
20 substance holding the permit or permitting any drugged or drug
21 abusing person to loiter in or around his or her place of business;

22 3. The sale to any person under twenty-one (21) years of age of
23 low-point beer;

1 4. Permitting persons under the age of twenty-one (21) in a
2 separate or enclosed bar area which has as its main purpose the
3 selling or serving of low-point beer for consumption on the
4 premises, in violation of the provisions of Sections 241 through 246
5 of this title;

6 5. Nonpayment of any of the taxes or license fees imposed by
7 the provisions of Section 163.1 et seq. of this title on complaint
8 of the Oklahoma Tax Commission;

9 6. Violating any of the laws of the state commonly called
10 "Prohibition Laws" or violating any of the gambling laws of the
11 state or permitting anyone to violate any of the laws in such places
12 or violating any of the provisions of Section 163.1 et seq. of this
13 title;

14 7. Conviction for the violation of any of the laws of this
15 state, another state or the United States for the sale or possession
16 of intoxicating liquors within three (3) years immediately preceding
17 the issuance of the dealer's license;

18 8. Violating any law pertaining to the use, possession,
19 manufacture or sale of any controlled substance pursuant to the
20 Uniform Controlled Dangerous Substances Act, or violation of any
21 rule promulgated or order issued to control a new product or
22 noncontrolled product or substance pursuant to Section 2-201 of
23 Title 63 of the Oklahoma Statutes, or violation of any drug or
24 narcotic law of the United States; or

1 9. A material false statement in the application.

2 L. After the revocation of any permit, for any of the above
3 reasons, except paragraph 5 of subsection K of this section for
4 nonpayment of taxes, or license fees, or except as otherwise
5 provided in this subsection, no new permit shall be issued to the
6 same person or to a relative of such person for the same location or
7 premises prior to the expiration of a period of one (1) year from
8 the date of the revocation. Upon the fourth or subsequent
9 revocation of a permit for a violation of paragraph 3 or 4 of
10 subsection K of this section, no new permit shall be issued to the
11 same person or to a relative of such person for the same location or
12 premises prior to the expiration of a period of three (3) years from
13 the date of the revocation.

14 M. On or before the tenth day of each month each district court
15 clerk shall file with the Oklahoma Tax Commission, on forms
16 prescribed and furnished by the Commission, a report showing the
17 name, address, and county permit number of each person to whom a
18 county permit has been issued or whose permit has been revoked, or
19 who shall have been refused a county permit, during the previous
20 calendar month. In case of the revocation of a permit by a judge of
21 the district court, the district court clerk shall within five (5)
22 days report the action to the Oklahoma Tax Commission. If county
23 permits shall have been issued, revoked or refused during the month,
24

1 the district court clerk shall make a report accordingly to the
2 Commission.

3 N. 1. Upon application to and approval by the court clerk of
4 the district court, an applicant to be a retail dealer as defined by
5 Section 163.2 of this title who meets the requirements of this
6 section and Section 163.11a of this title may be granted a special
7 event permit after payment of a fee of Twenty-five Dollars (\$25.00)
8 in addition to other fees required by law, which fees shall not be
9 refundable or apportionable. A special event permit for the sale
10 and on-premises consumption of low-point beer shall be issued
11 fourteen (14) days after the date of filing with the district court
12 of the application, unless a protest is filed as provided in this
13 subsection.

14 2. Every application for a special event permit shall contain
15 proof that a copy of the application has been mailed to the chief of
16 police or marshal of the city or town, and the sheriff and district
17 attorney of the county, wherein the special event is to be located.

18 a. If no objection is filed within ten (10) days after
19 service of notice of the application, the court clerk
20 may grant the special event permit.

21 b. If a written objection or request for restrictions is
22 filed within ten (10) days after service of the
23 application, a judge of the district court, upon five
24 (5) days' notice to the applicant, chief of police or

1 marshal of the city or town, and sheriff and district
2 attorney of the county, where the event is to occur,
3 shall determine whether the special permit should be
4 granted, restricted or denied, based upon the totality
5 of circumstances concerning the proposed event,
6 including, but not limited to, the location of the
7 event, qualifications of the applicant, history of the
8 applicant, and specific concerns regarding public
9 safety.

10 3. A special event permit issued under this subsection shall
11 authorize the holder thereof to sell and distribute low-point beer
12 for a period not to exceed ten (10) consecutive days from the date
13 of issuance. A separate permit shall be required for each
14 individual place of business, whether permanent or a temporary
15 assemblage. Provided, retail dealers shall not be required to
16 obtain a special permit for each bar or service unit within the same
17 enclosed area or within the general vicinity of each other for
18 events held outside a physical structure. A special event permit
19 shall not be renewable. A municipality shall not, by ordinance or
20 otherwise, refuse to issue a special event permit or special event
21 license for any event for which the applicant has received a special
22 event permit as provided in this section.

23 O. That the person demanded, was shown, and reasonably relied
24 upon proof of age shall be a rebuttable presumption to any action

1 brought pursuant to this section. A person cited for violating this
2 section shall be deemed to have reasonably relied upon proof of age,
3 and such person shall not be found guilty of such violation if:

4 1. The individual who purchased or received the low-point beer
5 presented what a reasonable person would have believed was a driver
6 license or other government-issued photo identification purporting
7 to establish that such individual was twenty-one (21) years of age
8 or older; or

9 2. The person cited for the violation confirmed the validity of
10 the driver license or other government-issued photo identification
11 presented by such individual by performing a transaction scan by
12 means of a transaction scan device.

13 Provided, that this defense shall not relieve from liability any
14 person cited for a violation of this section if such person failed
15 to exercise reasonable diligence to determine whether the physical
16 description and picture on the driver license or other government-
17 issued photo identification was that of the individual who presented
18 it. The availability of the defense described in this subsection
19 does not affect the availability of any other defense under any
20 other provision of law.

21 P. It shall not be deemed a violation of this section or the
22 Low-Point Beer Distribution Act for a licensed wholesaler to sell
23 low-point beer to a retailer who holds a permit from the Oklahoma
24 Tax Commission pursuant to Section 163.7 of this title, regardless

1 of whether or not such retailer holds a valid permit from the
2 district court of the relevant county pursuant to this section or
3 such district court permit has expired. Any permit issued by the
4 Oklahoma Tax Commission pursuant to Section 163.7 of this title
5 shall be deemed valid, and licensed wholesalers shall have no
6 obligation to independently determine the validity of such permit.

7 SECTION 2. AMENDATORY 37 O.S. 2011, Section 163.18G, is
8 amended to read as follows:

9 Section 163.18G Any aggrieved person shall have a cause of
10 action for violations of the provisions of the Low-Point Beer
11 Distribution Act and Section 231 of this title and may recover
12 damages or obtain injunctive relief or both; provided however, that
13 no licensed wholesaler shall be liable to any aggrieved person for
14 the sale of low-point beer to a retailer who holds a permit from the
15 Oklahoma Tax Commission pursuant to Section 163.7 of this title,
16 regardless of whether such retailer holds a valid permit from the
17 district court of the relevant county pursuant to Section 163.11 of
18 this title or such district court permit has expired. Any permit
19 issued by the Oklahoma Tax Commission pursuant to Section 163.7 of
20 this title shall be deemed valid, and licensed wholesalers shall
21 have no obligation to independently determine the validity of such
22 permit.

23 SECTION 3. AMENDATORY 37 O.S. 2011, Section 163.18H, is
24 amended to read as follows:

1 Section 163.18H A. In addition to any other powers conferred
2 on the Oklahoma Tax Commission to impose penalties for violations of
3 Sections 163.1 through 163.25 and 231 of this title, whenever in the
4 judgment of the Commission any person has committed an act which
5 constitutes a violation of the Low-Point Beer Distribution Act and
6 Section 231 of this title, the Commission may:

7 1. After notice and hearing, issue a cease and desist order to
8 any person that is licensed as a manufacturer or wholesaler;

9 2. Impose a fine of not more than Five Thousand Dollars
10 (\$5,000.00) for each violation in the event that after the issuance
11 of an order to cease and desist the illegal activity, the person
12 that the order is directed to commits any act in violation of the
13 order; and

14 3. Make application to the appropriate court for an order
15 enjoining such acts or practices, and upon a showing by the
16 Commission that such violations have occurred, an injunction,
17 restraining order, or such other order as may be appropriate shall
18 be granted by such court, without bond.

19 B. Each day a violation is continuing shall constitute a
20 separate offense.

21 C. Administrative fines imposed pursuant to the provisions of
22 this section shall be enforceable in the district courts of this
23 state.
24

1 D. All administrative fines collected by the Commission
2 pursuant to the provisions of this section shall be forwarded to the
3 State Treasurer for deposit in the General Revenue Fund.

4 E. Any manufacturer or wholesaler injured by a violation of the
5 Low-Point Beer Distribution Act may:

6 1. Bring an action for recovery of damages. Judgment shall be
7 entered for actual damages plus reasonable attorney's fees and
8 costs; and

9 2. Bring an action to restrain and enjoin the violation of the
10 Low-Point Beer Distribution Act.

11 F. Notwithstanding the provisions of subsections A, B, C, D and
12 E of this section, no licensed wholesaler shall be subject to any
13 fines, orders or other penalties imposed by the Oklahoma Tax
14 Commission as a result of the sale of low-point beer to a retailer
15 who holds a permit from the Oklahoma Tax Commission pursuant to
16 Section 163.7 of this title, regardless of whether such retailer
17 holds a valid permit from the district court of the relevant county
18 pursuant to Section 163.11 of this title or such district court
19 permit has expired. Any permit issued by the Oklahoma Tax
20 Commission pursuant to Section 163.7 of this title shall be deemed
21 valid, and licensed wholesalers shall have no obligation to
22 independently determine the validity of such permit.

23 SECTION 4. AMENDATORY 37 O.S. 2011, Section 163.20, is
24 amended to read as follows:

1 Section 163.20 A. Any person who shall engage in the sale of
2 low-point beer in violation of the provisions of Sections 163.1
3 through 163.25 of this title shall be deemed guilty of a
4 misdemeanor, and upon conviction thereof shall be punished for such
5 misdemeanor as provided for by the general statutes of this state.

6 B. Any person who engages in the sale or shipping of low-point
7 beer in violation of the provisions of Section ~~±~~ 163.26 of this ~~act~~
8 title on or after the effective date of Section 20.1 of Title 21 of
9 the Oklahoma Statutes, upon conviction, shall be guilty of a
10 Schedule G felony if the sale or delivery is made to a person under
11 twenty-one (21) years of age, or a misdemeanor if the sale or
12 delivery is made to a person twenty-one (21) years of age or older.
13 Any person who engages in the sale or shipping of low-point beer in
14 violation of the provisions of Section ~~±~~ 163.26 of this ~~act~~ title
15 before the effective date of Section 20.1 of Title 21 of the
16 Oklahoma Statutes shall be guilty of a felony punishable by
17 imprisonment for not more than two (2) years, if the sale or
18 delivery is made to a person under twenty-one (21) years of age, or
19 a misdemeanor, if the sale or delivery is made to a person twenty-
20 one (21) years of age or older. The fine for a violation of Section
21 ~~±~~ 163.26 of this ~~act~~ title shall be not more than Five Thousand
22 Dollars (\$5,000.00). In addition, if such person holds a permit
23 issued by the Oklahoma Tax Commission pursuant to Section 163.7 of
24

1 this title, the permit shall be revoked pursuant to the procedures
2 set forth in Section 163.18H of this title.

3 C. Notwithstanding the provisions of subsections A and B of
4 this section, no licensed wholesaler shall be guilty of a
5 misdemeanor or subject to any fines or license revocation as a
6 result of the sale of low-point beer to a retailer who holds a
7 permit from the Oklahoma Tax Commission pursuant to Section 163.7 of
8 this title, regardless of whether such retailer holds a valid permit
9 from the district court of the relevant county pursuant to Section
10 163.11 of this title or such district court permit has expired. Any
11 permit issued by the Oklahoma Tax Commission pursuant to Section
12 163.7 of this title shall be deemed valid, and licensed wholesalers
13 shall have no obligation to independently determine the validity of
14 such permit.

15 SECTION 5. AMENDATORY 37 O.S. 2011, Section 521, as last
16 amended by Section 5 of Enrolled House Bill No. 1302 of the 1st
17 Session of the 56th Oklahoma Legislature, is amended to read as
18 follows:

19 Section 521. A. A brewer license shall authorize the holder
20 thereof: To manufacture, bottle, package, and store beer on
21 licensed premises; to sell beer in this state to holders of Class B
22 wholesaler licenses and retail licenses and to sell beer out of this
23 state to qualified persons; to sell beer produced by the licensee to
24 consumers twenty-one (21) years of age or older on the premises of

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

20 B. A distiller license shall authorize the holder thereof: To
21 manufacture, bottle, package, and store spirits on licensed
22 premises; to sell spirits in this state to licensed wholesalers and
23 manufacturers only; to sell spirits out of this state to qualified
24 persons; to purchase from licensed distillers and rectifiers in this

1 state, and import spirits from without this state for manufacturing
2 purposes in accordance with federal laws and regulations.

3 C. A winemaker license shall authorize the holder thereof: To
4 manufacture (including such mixing, blending and cellar treatment as
5 authorized by federal law), bottle, package, and store on licensed
6 premises wine containing not more than twenty-four percent (24%)
7 alcohol by volume, provided the bottle or package sizes authorized
8 shall be limited to the capacities approved by the United States
9 Alcohol and Tobacco Tax and Trade Bureau; to sell wine in this state
10 to licensed wholesalers and manufacturers; to sell bottles of wine
11 produced at the winery from grapes and other fruits and berries
12 grown in this state, if available, for either on-premises or off-
13 premises consumption to consumers on the premises of the winery; to
14 serve visitors on the licensed premises samples of wine produced on
15 the premises; to serve free samples of wine produced at the winery
16 at festivals and trade shows; to sell wine produced at the winery,
17 ~~in original sealed containers,~~ for either on-premises or off-
18 premises consumption at festivals and trade shows; to sell wine out
19 of this state to qualified persons; to purchase from licensed
20 winemakers, distillers and rectifiers in this state, and to import
21 into this state wine, brandy and fruit spirits for use in
22 manufacturing in accordance with federal laws and regulations; to
23 sell and serve Oklahoma-manufactured wine, mulled wine or spiced
24 wine, mixed with nonalcoholic beverages or food items such as water,

1 sugar, fruits and vegetables, at any temperature for either on-
2 premises or off-premises consumption; provided, a winemaker either
3 within or without this state that annually produces no more than ten
4 thousand (10,000) gallons of wine may elect to sell and self-
5 distribute the wine produced by such winemaker directly to licensed
6 retail package stores and restaurants in this state; and provided
7 further that:

8 1. Any such winemaker which elects to directly sell its wine to
9 package stores and restaurants shall not also use a licensed
10 wholesale distributor as a means of distribution, and shall be
11 required to sell its wines to every package store and restaurant
12 licensee who desires to purchase the same, on the same price basis
13 and without discrimination;

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

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

1 D. A winemaker self-distribution license shall authorize a
2 licensed winemaker within or without this state which is permitted
3 by Section 3 of Article XXVIII of the Oklahoma Constitution and
4 subsection C of this section, to distribute its wine directly to
5 retail package stores and restaurants in this state and that elects
6 to do so, to sell and deliver its wines directly to licensed retail
7 package stores and restaurants in this state in full case lots only,
8 and in accordance with the provisions of the Oklahoma Alcoholic
9 Beverage Control Act and such rules as the ABLE Commission shall
10 adopt.

11 E. A rectifier license shall authorize the holder thereof: To
12 rectify spirits and wines, bottle, package, and store same on the
13 licensed premises; to sell spirits and wines in this state to
14 licensed wholesalers and manufacturers only; to sell spirits and
15 wines out of this state to qualified persons; to purchase from
16 licensed manufacturers in this state; and to import into this state
17 for manufacturing purposes spirits and wines in accordance with
18 federal laws and regulations.

19 F. 1. A wholesaler license shall authorize the holder thereof:
20 To purchase and import into this state spirits and wines from
21 persons authorized to sell same who are the holders of a nonresident
22 seller license, and their agents who are the holders of
23 manufacturers agent licenses; to purchase spirits and wines from
24 licensed distillers, rectifiers and winemakers in this state; to

1 purchase spirits and wines from licensed wholesalers, to the extent
2 set forth in paragraphs 2 and 3 of this subsection; to sell in
3 retail containers in this state to retailers, mixed beverage,
4 caterer, special event, public event, hotel beverage or
5 airline/railroad beverage licensees, spirits and wines which have
6 been received and unloaded at the bonded warehouse facilities of the
7 wholesaler before such sale; to sell to licensed wholesalers, to the
8 extent set forth in paragraphs 2 and 3 of this subsection, spirits
9 and wines which have been received and unloaded at the bonded
10 warehouse facilities of the wholesaler before such sale; and to sell
11 spirits and wines out of this state to qualified persons. Provided,
12 however, sales of spirits and wine in containers with a capacity of
13 less than one-twentieth (1/20) gallon by a holder of a wholesaler
14 license shall be in full case lots and in the original unbroken
15 case. Wholesalers shall be authorized to place such signs outside
16 their place of business as are required by Acts of Congress and by
17 such laws and regulations promulgated under such Acts.

18 2. Wholesalers are prohibited from purchasing annually in
19 excess of fifteen percent (15%) of their total spirits inventory and
20 fifteen percent (15%) of their total wine inventory from one or more
21 wholesalers. Wholesalers are also prohibited from purchasing
22 annually in excess of fifteen percent (15%) of their inventory of
23 any individual brand of spirits or wine from one or more
24 wholesalers. The volume of spirits and wine and of each brand that

1 each wholesaler is permitted to purchase annually from other
2 wholesalers shall be calculated by the ABLE Commission by
3 multiplying fifteen percent (15%) by:

- 4 a. the total volume of spirits sales of the wholesaler,
5 by liter, from the previous calendar year, and
- 6 b. the total volume of wine sales of the wholesaler, by
7 liter, from the previous calendar year, and
- 8 c. the volume of sales of each brand of spirits or wine
9 of the wholesaler, by liter, from the previous
10 calendar year.

11 A wholesaler who did not post any sales of spirits, wine or of a
12 particular brand in the previous calendar year shall be deemed to
13 have sold the same volume of spirits, wine or of a particular brand
14 as the wholesaler posting the smallest volumes of sales in spirits,
15 wine or of a particular brand for that year for the purposes of this
16 paragraph. Notwithstanding the foregoing, wholesalers shall not
17 purchase any inventory in spirits or wine from any other wholesaler
18 until such time that the purchasing wholesaler possesses an
19 inventory valued at no less than Two Hundred Fifty Thousand Dollars
20 (\$250,000.00). Inventory valuation shall be based on the original
21 actual price paid by the purchasing wholesaler to the nonresident
22 seller for the inventory.

23 3. A wholesaler may sell spirits and wine to other wholesalers
24 or purchase spirits and wines from other wholesalers without

1 complying with paragraph 2 of this subsection in the case of the
2 sale, purchase, or other transfer or acquisition of the entire
3 business of a wholesaler, including the inventory of spirits and
4 wine.

5 4. A wholesaler license shall authorize the holder thereof to
6 operate a single bonded warehouse with a single central office
7 together with delivery facilities at a location in this state only
8 at the principal place of business for which the wholesaler license
9 was granted.

10 5. All licensed wholesalers shall register prices, purchase and
11 keep on hand or have on order a fifteen-day supply of all brands
12 constituting the top eighteen brands in total sales by all Oklahoma
13 wholesalers during the past twelve-month period, according to the
14 records of the ABLE Commission as revised by the ABLE Commission
15 quarterly; provided, however, that not more than three brands of any
16 particular nonresident seller shall be included in the top-brands
17 classification. All purchase orders for these top eighteen brands
18 must show an expected due delivery date. These purchase orders may
19 only be canceled with prior approval of the Director of the ABLE
20 Commission, unless a wholesaler shall have in its warehouse a
21 fifteen-day supply of merchandise on such purchase order.

22 In order to allow the ABLE Commission to determine the top
23 eighteen brands, wholesalers must submit to the ABLE Commission
24 every sixty (60) days a sworn affidavit listing their top twenty-

1 five brands in sales for the previous sixty (60) days, excluding
2 sales to wholesalers. Such affidavits shall be submitted in
3 conjunction with the original price postings of wholesalers.

4 A fifteen-day supply of a particular brand for a particular
5 wholesaler shall be based upon the market share of the wholesaler,
6 determined by first multiplying the total number of liters of such
7 brand sold by all wholesalers to all retailers during the previous
8 calendar year by the percentage that the total sales of wine and
9 spirits of the particular wholesaler, in liters, for such calendar
10 year bears to the total sales of wine and spirits, in liters,
11 reported by all wholesalers for such calendar year; and then
12 dividing by twenty-four (24); provided, that a fifteen-day supply
13 for a wholesaler who has not been in business for the entirety of
14 the previous calendar year shall be deemed to be equal to that of
15 the wholesaler who was in business for the entirety of the previous
16 calendar year and who reported the lowest volume of sales of wine
17 and spirits, in liters, of any wholesaler having been in business
18 for such period.

19 G. A Class B wholesaler license shall authorize the holder
20 thereof: To purchase and import into this state beer from persons
21 authorized to sell same who are the holders of nonresident seller
22 licenses, and their agents who are the holders of manufacturers
23 agent licenses; to purchase beer from licensed brewers and Class B
24 wholesalers in this state; to sell in retail containers to

1 retailers, mixed beverage, caterer, special event, public event,
2 hotel beverage, and airline/railroad beverage licensees in this
3 state, beer which has been unloaded and stored at the holder's self-
4 owned or leased and self-operated warehouse facilities for a period
5 of at least twenty-four (24) hours before such sale; and to sell
6 beer in this state to Class B wholesalers and out of this state to
7 qualified persons, including federal instrumentalities and voluntary
8 associations of military personnel on federal enclaves in this state
9 over which this state has ceded jurisdiction.

10 H. A package store license shall authorize the holder thereof:
11 To purchase alcohol, spirits, beer, and wine in retail containers
12 from the holder of a brewer, wholesaler or Class B wholesaler
13 license and to purchase wine from a winemaker who is permitted and
14 has elected to self-distribute as provided in Section 3 of Article
15 XXVIII of the Oklahoma Constitution and to sell same on the licensed
16 premises in such containers to consumers for off-premises
17 consumption only and not for resale; provided, wine, beer, and
18 spirits may be sold to charitable organizations that are holders of
19 charitable alcoholic beverage auction or charitable alcoholic
20 beverage event licenses. All alcoholic beverages that are sold by a
21 package store are to be sold at ordinary room temperature.

22 I. A mixed beverage license shall authorize the holder thereof:
23 To purchase alcohol, spirits, beer or wine in retail containers from
24 the holder of a wholesaler or Class B wholesaler license or as

1 specifically provided by law and to sell, offer for sale and possess
2 mixed beverages for on-premises consumption only; provided, the
3 holder of a mixed beverage license issued for an establishment which
4 is also a restaurant may purchase wine directly from a winemaker who
5 is permitted and has elected to self-distribute as provided in
6 Section 3 of Article XXVIII of the Oklahoma Constitution.

7 Sales and service of mixed beverages by holders of mixed
8 beverage licenses shall be limited to the licensed premises of the
9 licensee unless the holder of the mixed beverage license also
10 obtains a caterer license or a mixed beverage/caterer combination
11 license. A mixed beverage license shall only be issued in counties
12 of this state where the sale of alcoholic beverages by the
13 individual drink for on-premises consumption has been authorized. A
14 separate license shall be required for each place of business. No
15 mixed beverage license shall be issued for any place of business
16 functioning as a motion picture theater, as defined by Section 506
17 of this title. A mixed beverage licensee whose main purpose is
18 hosting live performance art presentations may utilize the services
19 of a licensed caterer for its alcoholic beverage service as long as
20 it is not open to the public more than one hundred twenty (120) days
21 per year.

22 J. A bottle club license shall authorize the holder thereof: To
23 store, possess and mix alcoholic beverages belonging to members of
24 the club and to serve such alcoholic beverages for on-premises

1 consumption to club members. A bottle club license shall only be
2 issued in counties of this state where the sale of alcoholic
3 beverages by the individual drink for on-premises consumption has
4 not been authorized. A separate license shall be required for each
5 place of business.

6 K. A caterer license shall authorize the holder thereof: To
7 sell mixed beverages for on-premises consumption incidental to the
8 sale or distribution of food at particular functions, occasions, or
9 events which are private and temporary in nature. A caterer license
10 shall not be issued in lieu of a mixed beverage license. A caterer
11 license shall only be issued or utilized in counties of this state
12 where the sale of alcoholic beverages by the individual drink for
13 on-premises consumption has been authorized. A separate license
14 shall be required for each place of business.

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

22 L. 1. An annual special event license shall authorize the
23 holder thereof: To sell and distribute mixed beverages for
24 consumption on the premises for which the license has been issued

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

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

21 3. An annual public event license shall authorize the holder
22 thereof: to sell and distribute mixed beverages for consumption on
23 the premises for which the license has been issued for up to six
24 events to be held over a period not to exceed one (1) year. The

1 applicant for an annual public event license, who does not already
2 hold a license issued by the ABLE Commission, shall make application
3 not less than sixty (60) days before its first event. The ABLE
4 Commission shall have the authority to waive the sixty-day
5 requirement at its discretion. For purposes of this paragraph, an
6 event shall not exceed a period of three (3) consecutive days. An
7 annual public event license shall only be issued in counties of this
8 state where the sale of alcoholic beverages by the individual drink
9 for on-premises consumption has been authorized. The holder of an
10 annual public event license shall provide written notice to the ABLE
11 Commission of each subsequent public event not less than ten (10)
12 days before the event is held. A public event license shall not be
13 used in lieu of a mixed beverage license. The holder of an annual
14 public event license may choose to utilize the services of a
15 licensed caterer to provide and distribute the alcoholic beverages
16 at their events. When the applicant chooses to utilize the services
17 of a licensed caterer, the applicant shall declare upon application
18 which licensed caterer will be used. The licensed caterer shall be
19 responsible for payment of all applicable mixed beverage taxes
20 through the existing Mixed Beverage Tax Permit issued to his or her
21 business by the Oklahoma Tax Commission.

22 4. A one-time public 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. The applicant

1 for a one-time public event license, who does not already hold a
2 license issued by the ABLE Commission, shall make application not
3 less than sixty (60) days before the event. The ABLE Commission
4 shall have the authority to waive the sixty-day requirement at its
5 discretion. For purposes of this paragraph, an event shall not
6 exceed a period of three (3) consecutive days. A public event
7 license shall only be issued in counties of this state where the
8 sale of alcoholic beverages by the individual drink for on-premises
9 consumption has been authorized. A public event license shall not
10 be used in lieu of a mixed beverage license. The holder of a one-
11 time public event license may choose to utilize the services of a
12 licensed caterer to provide and distribute the alcoholic beverages
13 at his or her event. When the applicant chooses to utilize the
14 services of a licensed caterer, the applicant shall declare upon
15 application which licensed caterer will be used. The licensed
16 caterer shall be responsible for payment of all applicable mixed
17 beverage taxes through the existing Mixed Beverage Tax Permit issued
18 to his or her business by the Oklahoma Tax Commission.

19 M. A hotel beverage license shall authorize the holder thereof:
20 To sell or serve alcoholic beverages in 50 milliliter spirits, 187
21 milliliter wine, and 12-ounce malt beverage containers which are
22 distributed from a hotel room mini-bar. A hotel beverage license
23 shall only be issued in counties of this state where the sale of
24 alcoholic beverages by the individual drink for on-premises

1 consumption has been authorized. A hotel beverage license shall
2 only be issued to a hotel or motel as defined by Section 506 of this
3 title which is also the holder of a mixed beverage license.
4 Provided, that application may be made simultaneously for both such
5 licenses. A separate license shall be required for each place of
6 business.

7 N. An airline/railroad beverage license shall authorize the
8 holder thereof: To sell or serve alcoholic beverages in or from any
9 size container on a commercial passenger airplane or railroad
10 operated in compliance with a valid license, permit or certificate
11 issued under the authority of the United States or this state, even
12 though the airplane or train, in the course of its travel, may cross
13 an area in which the sale of alcoholic beverages by the individual
14 drink is not authorized and to store alcoholic beverages in sealed
15 containers of any size at any airport or station regularly served by
16 the licensee, in accordance with rules promulgated by the Alcoholic
17 Beverage Laws Enforcement Commission. Alcoholic beverages purchased
18 by the holder of an airline/railroad license from the holder of a
19 wholesaler license shall be presumed to be purchased for consumption
20 outside the State of Oklahoma or in interstate commerce, and shall
21 be exempt from the excise tax provided for in Section 553 of this
22 title.

23 O. An agent license shall authorize the holder thereof: To
24 represent only the holders of licenses within this state, other than

1 retailers, authorized to sell alcoholic beverages to retail dealers
2 in Oklahoma, and to solicit and to take orders for the purchase of
3 alcoholic beverages from retailers including licensees authorized to
4 sell alcoholic beverages by the individual drink for on-premises
5 consumption. Such license shall be issued only to agents and
6 employees of the holder of a license under the Oklahoma Alcoholic
7 Beverage Control Act, but no such license shall be required of an
8 employee making sales of alcoholic beverages on licensed premises of
9 the employee's principal. No person holding an agent license shall
10 be entitled to a manufacturers agent license.

11 P. An employee license shall authorize the holder thereof: To
12 work in a package store, mixed beverage establishment, beer and wine
13 establishment, bottle club, public event or any establishment where
14 alcohol or alcoholic beverages are sold, mixed, or served. Persons
15 employed by a mixed beverage licensee, beer and wine licensee,
16 public event licensee or a bottle club who do not participate in the
17 service, mixing, or sale of mixed beverages shall not be required to
18 have an employee license. Provided, however, that a manager
19 employed by a mixed beverage licensee, public event licensee or a
20 bottle club shall be required to have an employee license whether or
21 not the manager participates in the service, mixing or sale of mixed
22 beverages. Applicants for an employee license must have a health
23 card issued by the county in which they are employed, if the county
24 issues such a card. Employees of special event, caterer, unless

1 catering a mixed beverage licensed premises, or airline/railroad
2 beverage licensees shall not be required to obtain an employee
3 license. Persons employed by a hotel licensee who participate in
4 the stocking of hotel room mini-bars or in the handling of alcoholic
5 beverages to be placed in such devices shall be required to have an
6 employee license.

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

9 1. Manufacture of patent, proprietary, medicinal,
10 pharmaceutical, antiseptic, and toilet preparations;

11 2. Manufacture of extracts, syrups, condiments, and food
12 products; and

13 3. For use in scientific, chemical, mechanical, industrial, and
14 medicinal products and purposes.

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

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

23 No provisions of the Oklahoma Alcoholic Beverage Control Act
24 shall apply to alcohol withdrawn by any person free of federal tax

1 under a tax-free permit issued by the United States government, if
2 such alcohol is received, stored, and used as authorized by federal
3 laws.

4 R. A carrier license may be issued to any common carrier
5 operating under a certificate of convenience and necessity issued by
6 any duly authorized federal or state regulatory agency. Such
7 license shall authorize the holder thereof to transport alcoholic
8 beverages other than wine sold directly by a winemaker or winery to
9 a retail package store or restaurant into, within, and out of this
10 state under such terms, conditions, limitations, and restrictions as
11 the ABLE Commission may prescribe by order issuing such license and
12 by regulations.

13 S. A private carrier license may be issued to any carrier other
14 than a common carrier described in subsection Q of this section.
15 Such license shall authorize the holder thereof to transport
16 alcoholic beverages other than wine sold directly by a winemaker or
17 winery to a retail package store or restaurant into, within, or out
18 of this state under such terms, conditions, limitations, and
19 restrictions as the ABLE Commission may prescribe by order issuing
20 such license and by regulations. No carrier license or private
21 carrier license shall be required of licensed brewers, distillers,
22 winemakers, rectifiers, wholesalers, or Class B wholesalers, to
23 transport alcoholic beverages from the place of purchase or
24 acquisition to the licensed premises of such licensees and from such

1 licensed premises to the licensed premises of the purchaser in
2 vehicles owned or leased by such licensee when such transportation
3 is for a lawful purpose and not for hire.

4 No carrier license or private carrier license shall be required
5 of the holder of a package store, mixed beverage, caterer, special
6 event, hotel beverage, public event or airline/railroad license to
7 pick up alcoholic beverage orders from the licensees' wholesaler or
8 Class B wholesaler from whom they are purchased, and to transport
9 such alcoholic beverages from the place of purchase or acquisition
10 to the licensed premise of such licensees in vehicles owned or under
11 the control of such licensee or a licensed employee of such licensee
12 under such terms, conditions, limitations and restrictions as the
13 ABLE Commission may prescribe.

14 T. A bonded warehouse license shall authorize the holder
15 thereof: To receive and store alcoholic beverages for the holders of
16 storage licenses on the licensed premises of the bonded warehouse
17 licensee. No goods, wares or merchandise other than alcoholic
18 beverages may be stored in the same bonded warehouse with alcoholic
19 beverages. The holder of a bonded warehouse license shall furnish
20 and file with the ABLE Commission a bond running to all bailers of
21 alcoholic beverages under proper storage licenses and their
22 assignees (including mortgagees or other bona fide lienholders)
23 conditioned upon faithful performance of the terms and conditions of
24 such bailments.

1 U. A storage license may be issued to a holder of a brewer,
2 distiller, winemaker, rectifier, wholesaler, Class B wholesaler,
3 nonresident seller, package store, mixed beverage, caterer, public
4 event or hotel beverage license, and shall authorize the holder
5 thereof: To store alcoholic beverages in a public warehouse holding
6 a bonded warehouse license, and no goods, wares or merchandise other
7 than alcoholic beverages may be stored in the same warehouse with
8 alcoholic beverages in private warehouses owned or leased and
9 operated by such licensees elsewhere than on their licensed
10 premises. Provided:

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

14 2. Any licensee who is the holder of a mixed beverage/caterer
15 combination license or the holder of a mixed beverage license and a
16 hotel beverage license who is issued a storage license shall store
17 all inventories of alcoholic beverages either on the premises of the
18 mixed beverage establishment or in the warehouse;

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

21 4. A storage license shall be required for a public event
22 licensee storing alcoholic beverages for use at a subsequent event;
23 and
24

1 5. Notwithstanding the provisions of subsection I of this
2 section or any other provision of this title, a licensee who wholly
3 owns more than one licensed mixed beverage establishment may store
4 alcoholic beverages for each of the licensed establishments in one
5 location under one storage license. Alcoholic beverages purchased
6 and stored pursuant to the provisions of a storage license, for one
7 licensed mixed beverage establishment may be transferred by a
8 licensee to another licensed mixed beverage establishment which is
9 wholly owned by the same licensee. Notice of such a transfer shall
10 be given in writing to the Oklahoma Tax Commission and the ABLE
11 Commission within three (3) business days of the transfer. The
12 notice shall clearly show the quantity, brand and size of every
13 transferred bottle or case.

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

21 W. A beer and wine license shall authorize the holder thereof:
22 To purchase beer and wine in retail containers from the holder of a
23 wholesaler or Class B wholesaler license or as specifically provided
24 by law and to sell, offer for sale and possess beer and wine for on-

1 premises consumption only; provided, the holder of a beer and wine
2 license issued for an establishment which is also a restaurant may
3 purchase wine from a winemaker who is permitted and has elected to
4 self-distribute as provided in Section 3 of Article XXVIII of the
5 Oklahoma Constitution.

6 Sales and service of beer and wine by holders of beer and wine
7 licenses shall be limited to the licensed premises of the licensee
8 unless the holder of the beer and wine license also obtains a
9 caterer license. A beer and wine 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. No
13 beer and wine license shall be issued for any place of business
14 functioning as a motion picture theater, as defined by Section 506
15 of this title. No spirits shall be stored, possessed or consumed on
16 the licensed premises of a beer and wine licensee.

17 X. A charitable auction or charitable alcoholic beverage event
18 license may be issued to a charitable organization exempt from
19 taxation under Section 501(c)(3), (4), (5), (6), (7), (8), (9),
20 (10), or (19) of the United States Internal Revenue Code. The
21 charitable alcoholic beverage event license shall authorize the
22 holder thereof to conduct a wine, spirit and/or beer event which may
23 consist of one or more of a wine, spirit and/or beer tasting event,
24 a wine, spirit and/or beer dinner event or a wine, spirit and/or

1 beer auction, which may be either a live auction conducted by an
2 auctioneer or a silent auction for which:

3 1. Bid sheets are accepted from interested bidders at the
4 event;

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

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

9 A charitable alcoholic beverage event shall be conducted solely
10 to raise funds for charitable purposes. A charitable alcoholic
11 beverage license will allow the event attendees access to tastings,
12 samples, dinners, and alcoholic beverages as parts of their entrance
13 fee or ticket price. Wine, spirits and/or beer used in, served, or
14 consumed at a charitable alcoholic beverage event may be purchased
15 by the charitable organization or donated by any person or entity.
16 The charitable alcoholic beverage event license shall be issued for
17 a period not exceeding four (4) days. Only eight such licenses may
18 be issued to an organization in any twelve-month period. The
19 charitable organization holding a charitable alcoholic beverage
20 event license shall not be required to obtain a special event
21 license. Charitable auction and charitable alcoholic beverage event
22 license holders may also utilize a licensed caterer to provide
23 additional alcohol services at the event and on the premises. The
24 charitable auction license shall authorize the holder thereof to

1 auction wine, spirits, and/or beer purchased from a retail package
2 store or received as a gift from an individual if the auction is
3 conducted to raise funds for charitable purposes. The charitable
4 auction license shall be issued for a period not to exceed two (2)
5 days. Only four such licenses shall be issued to an organization in
6 any twelve-month period. The maximum amount of wine, spirits,
7 and/or beer auctioned pursuant to the charitable auction license
8 shall not exceed fifty (50) gallons. All wine, beer, and spirits
9 auctioned pursuant to the charitable auction license shall be
10 registered and all fees and taxes shall be paid in accordance with
11 the Oklahoma Alcoholic Beverage Control Act.

12 No charitable alcoholic beverage event license shall be required
13 for an organization, association or nonprofit corporation which is
14 an economic development chamber or similar entity, provided the
15 event is not conducted primarily for fundraising purposes, and
16 provided the services of a licensed caterer are used to provide and
17 distribute the alcoholic beverages at the event.

18 Y. A mixed beverage/caterer combination license shall authorize
19 the holder thereof: To purchase or sell mixed beverages as
20 specifically provided by law for the holder of a mixed beverage
21 license or a caterer license. All provisions of the Oklahoma
22 Alcoholic Beverage Control Act applicable to mixed beverage licenses
23 or caterer licenses, or the holders thereof, shall also be
24 applicable to mixed beverage/caterer combination licenses or the

1 holders thereof, except where specifically otherwise provided. A
2 mixed beverage/caterer combination license shall only be issued in
3 counties of this state where the sale of alcoholic beverages by the
4 individual drink for on-premises consumption has been authorized. A
5 separate license shall be required for each place of business.

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

13 Z. A small farm winery license shall authorize the holder
14 thereof: To manufacture and bottle wines produced by that small
15 farm winery. In addition, a small farm winery license authorizes
16 the holder of that permit to bottle and sell wines produced by
17 another small farm winery. In order for a small farm winery to
18 bottle and sell another small farm winery's products, both the
19 selling winery and the buying winery shall be small farm winery
20 permit holders. A small farm wine may display the trademarked
21 "Oklahoma Grown" sticker available from the Oklahoma Grape Industry
22 Council.

23 AA. In the event any portion of this section is declared
24 invalid for any reason, the invalid portion shall be severed and the

1 rest and remainder of the section shall be saved and given full
2 force and application.

3 BB. Except as provided in Sections 554.1 and 554.2 of this
4 title with respect to cities, towns and counties, and except as may
5 be provided under Title 68 of the Oklahoma Statutes with respect to
6 the Oklahoma Tax Commission, no license or permit other than
7 licenses as provided under the Oklahoma Alcoholic Beverage Control
8 Act shall be required of any licensee by any agency, instrumentality
9 or political subdivision of this state to engage in any activity
10 covered by the Oklahoma Alcoholic Beverage Control Act anywhere
11 within the State of Oklahoma and no agency, instrumentality or
12 political subdivision of this state shall interfere with the ABLE
13 Commission's regulation of, or a wholesaler's performance of, the
14 sale, distribution, possession, handling or marketing of alcoholic
15 beverages on any premises of any licensee as defined in Section 506
16 of this title. Any license issued by the ABLE Commission under this
17 title may be relied upon by other licensees as a valid license. No
18 other licensee shall have any obligation to independently determine
19 the validity of such license or be held liable solely as a
20 consequence of another licensee's failure to maintain a valid
21 license.

22 SECTION 6. AMENDATORY 37 O.S. 2011, Section 554.1, as
23 amended by Section 15, Chapter 298, O.S.L. 2014 (37 O.S. Supp. 2016,
24 Section 554.1), is amended to read as follows:

1 Section 554.1 Cities and towns are hereby authorized to levy an
2 annual occupational tax for the privilege of operating as a
3 retailer, mixed beverage, beer and wine, caterer, public event or
4 special event licensee, bottle club, manufacturer, wholesaler or
5 Class B wholesaler, within their respective jurisdictions, not to
6 exceed the state license fee for such licensees; provided that the
7 aforementioned tax shall be levied only by the city or town in which
8 such licensee has his principal place of business. This section
9 shall not give any city or town any right to determine or regulate
10 the issuance of any license, except as specifically provided for in
11 this section, as the Alcoholic Beverage Laws Enforcement Commission
12 shall have exclusive authority as to issuance and regulations of
13 said licenses and no city or town may prescribe rules or regulations
14 in conflict with or in addition to the statutes of this state or the
15 rules of the ABLE Commission. No licensee shall be held liable for
16 engaging in business otherwise authorized under this title with any
17 other retailer, mixed beverage, beer and wine, caterer, public event
18 or special event licensee, bottle club, manufacturer, wholesaler or
19 Class B wholesaler solely because such other party has failed to pay
20 any occupational tax due under this section.

21 Cities or towns which levy an occupational tax under this
22 section shall make an annual report to the ABLE Commission, covering
23 the fiscal year, showing the number and class of licensees subject
24 to said tax, and the amount of money received therefrom, which

1 information is to be included in the annual report of the ABLE
2 Commission submitted to the Governor, and transmitted to the
3 Legislature.

4 SECTION 7. AMENDATORY 37 O.S. 2011, Section 554.2, as
5 amended by Section 16, Chapter 298, O.S.L. 2014 (37 O.S. Supp. 2016,
6 Section 554.2), is amended to read as follows:

7 Section 554.2 Counties are hereby authorized to levy an annual
8 occupational tax for the privilege of operating as a mixed beverage,
9 beer and wine, caterer, public event or special event licensee or as
10 a bottle club, within their respective jurisdictions and not located
11 in a city or town levying an occupation tax as provided by Section
12 554.1 of this title, not to exceed the state license fee for such
13 licensees; provided that the aforementioned tax shall be levied only
14 by the county in which such licensee has his or her principal place
15 of business. All revenues derived from any such annual occupational
16 tax shall be deposited in the general revenue fund of the county.
17 This section shall not give any county any right to determine or
18 regulate the issuance of any license, except as specifically
19 provided for in this section, as the Alcoholic Beverage Laws
20 Enforcement Commission shall have exclusive authority as to issuance
21 and regulations of said licenses and no county may prescribe rules
22 or regulations in conflict with or in addition to the statutes of
23 this state or the rules of the ABLE Commission. No licensee shall
24 be held liable for engaging in business otherwise authorized under

1 this act with any other retailer, mixed beverage, beer and wine,
2 caterer, public event or special event licensee, bottle club,
3 manufacturer, wholesaler or Class B wholesaler solely because such
4 other party has failed to pay any occupational tax due under this
5 section.

6 Counties which levy an occupational tax under this section shall
7 make an annual report to the ABLE Commission, covering the fiscal
8 year, showing the number and class of licensees subject to said tax,
9 and the amount of money received therefrom, which information is to
10 be included in the annual report of the ABLE Commission submitted to
11 the Governor, and transmitted to the Legislature.

12 SECTION 8. AMENDATORY Section 3, Chapter 366, O.S.L.
13 2016 (37A O.S. Supp. 2016, Section 1-103), is amended to read as
14 follows:

15 Section 1-103. As used in the Oklahoma Alcoholic Beverage
16 Control Act:

17 1. "ABLE Commission" or "Commission" means the Alcoholic
18 Beverage Laws Enforcement Commission;

19 2. "Alcohol" means and includes hydrated oxide of ethyl, ethyl
20 alcohol, ethanol or spirits of wine, from whatever source or by
21 whatever process produced. It does not include wood alcohol or
22 alcohol which has been denatured or produced as denatured in
23 accordance with Acts of Congress and regulations promulgated
24 thereunder;

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

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

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

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

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

23 8. "Bottle club" means any establishment in a county which has
24 not authorized the retail sale of alcoholic beverages by the

1 individual drink, which is required to be licensed to keep, mix and
2 serve alcoholic beverages belonging to club members on club
3 premises;

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

8 10. "Brand extension" means:

9 a. after the effective date of this act, any brand of
10 beer or cider introduced by a manufacturer in this
11 state which either:

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

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

17 b. any brand of beer that a manufacturer, the majority of
18 whose total volume of all brands of beer distributed
19 in this state by such manufacturer on January 1, 2016,
20 was distributed as low-point beer, desires to sell,
21 introduces, begins selling or theretofore has sold and
22 desires to continue selling a strong beer in this
23 state which either:
24

- (1) incorporates or incorporated all or a substantial part of the unique features of a preexisting low-point beer brand of the same licensed manufacturer, or
- (2) relies or relied to a significant extent on the goodwill associated with a preexisting low-point beer brand;

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

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

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

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

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

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

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

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

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

20 20. "Dual strength beer" means a brand of beer that,
21 immediately prior to ~~the effective date of this act~~ April 15, 2017,
22 was being sold and distributed in this state:
23
24

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

4 b. as strong beer pursuant to the Alcoholic Beverage
5 Control Act in effect immediately prior to the
6 effective date of this act,

7 and continues to be sold and distributed as such on October 1,

8 2018. Dual strength beer does not include a brand of beer that
9 arose as a result of a brand extension as defined in this section;

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

16 22. "Good cause" means:

17 a. failure by the distributor to comply with the material
18 and reasonable provisions of a written agreement or
19 understanding with the manufacturer, or

20 b. failure by the distributor to comply with the duty of
21 good faith;

22 23. "Good faith" means the duty of each party to any
23 distributor agreement and all officers, employees or agents thereof
24

1 to act with honesty in fact and within reasonable standards of fair
2 dealing in the trade;

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

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

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

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

23 28. "Low-point beer" shall mean any beverages containing more
24 than one-half of one percent (1/2 of 1%) alcohol by volume, and not

1 more than three and two-tenths percent (3.2%) alcohol by weight,
2 including but not limited to, beer or cereal malt beverages obtained
3 by the alcoholic fermentation of an infusion by barley or other
4 grain, malt or similar products;

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

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

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

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

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

22 33. "Mixed beverage cooler" means any beverage, by whatever
23 name designated, consisting of an alcoholic beverage and fruit or
24 vegetable juice, fruit or vegetable flavorings, dairy products or

1 carbonated water containing more than one-half of one percent (1/2
2 of 1%) of alcohol measured by volume but not more than seven percent
3 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is
4 packaged in a container not larger than three hundred seventy-five
5 (375) milliliters. Such term shall include but not be limited to
6 the beverage popularly known as a "wine cooler";

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

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

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

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

23 38. "Occupation" as used in connection with "occupation tax"
24 means the sites occupied as the places of business of the

1 manufacturers, wholesalers, beer distributors, retailers, mixed
2 beverage licensees, on-premises beer and wine licensees, bottle
3 clubs, caterers, public event and special event licensees;

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

6 40. "Package store" means any sole proprietor or partnership
7 that qualifies to sell wine, beer and/or spirits for off-premise
8 consumption and that is not a grocery store, convenience store or
9 drug store, or other retail outlet that is not permitted to sell
10 wine or beer for off-premise consumption;

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

13 42. "Person" means an individual, any type of partnership,
14 corporation, association, limited liability company or any
15 individual involved in the legal structure of any such business
16 entity;

17 43. "Premises" means the grounds and all buildings and
18 appurtenances pertaining to the grounds including any adjacent
19 premises if under the direct or indirect control of the licensee and
20 the rooms and equipment under the control of the licensee and used
21 in connection with or in furtherance of the business covered by a
22 license. Provided that the ABLE Commission shall have the authority
23 to designate areas to be excluded from the licensed premises solely
24 for the purpose of:

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

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

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

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

46. "Rectifier" means any person who rectifies, purifies or refines spirits or wines by any process (other than by original and continuous distillation, or original and continuous processing, from mash, wort, wash or other substance, through continuous closed vessels and pipes, until the production thereof is complete), and any person who, without rectifying, purifying or refining spirits, shall by mixing (except for immediate consumption on the premises where mixed) such spirits, wine or other liquor with any material,

1 manufactures any spurious, imitation or compound liquors for sale,
2 under the name of whiskey, brandy, rum, gin, wine, spirits, cordials
3 or any other name;

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

6 48. "Restaurant" means an establishment that is licensed to
7 sell alcoholic beverages by the individual drink for on-premises
8 consumption and where food is prepared and sold for immediate
9 consumption on the premises;

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

13 50. "Retailer" means a package store, grocery store,
14 convenience store or drug store licensed to sell alcoholic beverages
15 for off-premise consumption pursuant to a Retail Spirits License,
16 Retail Wine License or Retail Beer License;

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

1 52. "Short order food" means food other than full meals
2 including but not limited to sandwiches, soups and salads. Provided
3 that popcorn, chips and other similar snack food shall not be
4 considered "short order food";

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

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

11 55. "Small farm winery" means a wine-making establishment that
12 does not annually produce for sale more than fifteen thousand
13 (15,000) gallons of wine as reported on the United States Department
14 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of
15 Wine Premises Operations (TTB Form 5120.17);

16 56. "Sparkling wine" means champagne or any artificially
17 carbonated wine;

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

21 58. "Spirits" means any beverage other than wine or beer, which
22 contains more than one-half of one percent (1/2 of 1%) alcohol
23 measured by volume, and obtained by distillation, whether or not
24 mixed with other substances in solution and includes those products

1 known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and
2 fortified wines and similar compounds, but shall not include any
3 alcohol liquid completely denatured in accordance with the Acts of
4 Congress and regulations pursuant thereto;

5 59. "Strong beer" means beer which, prior to the effective date
6 of this act, was distributed pursuant to the Oklahoma Alcoholic
7 Beverage Control Act, Section 501 et seq. of Title 37 of the
8 Oklahoma Statutes;

9 60. "Successor manufacturer" means a primary source of supply,
10 a brewer, a cider manufacturer or an importer that acquires rights
11 to a beer or cider brand from a predecessor manufacturer;

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

13 62. "Territory" means a geographic region with a specified
14 boundary;

15 63. "Wine and spirits wholesaler" or "wine and spirits
16 distributor" means and includes any sole proprietorship or
17 partnership licensed to distribute wine and spirits in the state.
18 The term "wholesaler", as used in this act, shall be construed to
19 refer to a wine and spirits wholesaler; and

20 64. "Wine" means and includes any beverage containing more than
21 one-half of one percent (1/2 of 1%) alcohol by volume and not more
22 than twenty-four percent (24%) alcohol by volume at sixty (60)
23 degrees Fahrenheit obtained by the fermentation of the natural
24 contents of fruits, vegetables, honey, milk or other products

1 containing sugar, whether or not other ingredients are added, and
2 includes vermouth and sake, known as Japanese rice wine;

3 Words in the plural include the singular, and vice versa, and
4 words imparting the masculine gender include the feminine, as well
5 as persons and licensees as defined in this section.

6 SECTION 9. AMENDATORY Section 4, Chapter 366, O.S.L.
7 2016 (37A O.S. Supp. 2016, Section 1-104), is amended to read as
8 follows:

9 Section 1-104. A. The Alcoholic Beverage Laws Enforcement
10 Commission created in Section 1 of Article XXVIII of the Oklahoma
11 Constitution is hereby ~~recreated~~ re-created. The purpose of the
12 Commission shall be to enforce the alcoholic beverage laws of the
13 ~~State~~ state, and the Commission shall have such power and authority
14 to enforce such laws, rules and regulations as shall be prescribed
15 by the Oklahoma Alcoholic Beverage Control Act.

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

1 Commission, the Governor shall appoint a replacement, with the
2 advice and consent of the State Senate, within ninety (90) days.

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

5 D. No more than four members of the Commission shall be
6 appointed from the same political party. No more than two members
7 of the Commission shall be appointed from the same federal
8 congressional district.

9 E. No member of the Commission shall hold any license
10 authorized by the Oklahoma Alcoholic Beverage Control Act, or have
11 any interest in any capacity, in the manufacture, sale, distribution
12 or transportation of alcoholic beverages.

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

15 G. The Commission shall appoint a Director, whose duties shall
16 be defined as provided in Section ~~8~~ 1-108 of this ~~act~~ title.

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

23 1. Except for the sale of wine or beer to the public, an
24 interim license shall allow all qualified retail wine and retail

1 beer licensees to perform all activities permissible under a full
2 license including but not limited to purchasing, stocking and
3 storing the wine and/or full-strength beer prior to October 1, 2018.
4 In order to qualify for an interim license, the licensee must
5 satisfy all the requirements set forth in Article XXVIII A of the
6 Oklahoma Constitution and this act. The interim license shall
7 convert to a full license on October 1, 2018;

8 2. Package stores may install refrigerated coolers for the
9 storage of beer and wine prior to October 1, 2018, provided the
10 refrigerated coolers shall not be used to cool product below room
11 temperature ~~until after~~ prior to October 1, 2018; and

12 3. An interim license shall allow all qualified wine and
13 spirits wholesalers and beer distributors to perform all activities
14 permissible under a full license including but not limited to
15 selling and delivering wine and/or full-strength beer to all
16 qualified retail wine and retail beer licensees. In order to
17 qualify for an interim license, the wine and spirits wholesaler and
18 beer distributor must comply with the provisions set forth in
19 Article XXVIII A of the Oklahoma Constitution and this act. The
20 interim license shall convert to a full license on October 1, 2018.

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

24 a. such sales may begin no sooner than September 1, 2018,

1 b. the beer distributor either must be assigned a beer
2 distributor territory by the manufacturer pursuant to
3 a distributor agreement to begin October 1, 2018, or
4 be a brewer or an affiliate of a brewer that will be
5 permitted to distribute beer within two territories
6 pursuant to the provisions of subsection E of Section
7 3-108 of the this title, and

8 c. the interim license only permits sales to retailers by
9 the interim licensee either in the distribution
10 territory as set forth in the distributor agreement or
11 in the two territories permitted pursuant to the
12 provisions of subsection E of Section 3-108 of this
13 title.

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

20 SECTION 10. AMENDATORY Section 13, Chapter 366, O.S.L.
21 2016 (37A O.S. Supp. 2016, Section 2-101), is amended to read as
22 follows:
23
24

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

1. Brewer License.....	\$1,250.00
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2. Small Brewer License..... \$125.00

3. Distiller License.....	\$3,125.00
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4. Winemaker License.....	\$625.00
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5. Small Farm Winery License..... \$75.00

6. Rectifier License.....	\$3,125.00
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7. Wine and Spirits Wholesaler License.....	\$3,000.00
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8. Beer Distributor License.....	\$750.00
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9. The following retail spirits license fees shall be determined by the latest Federal Decennial Census:

a.	Retail Spirits License for cities and towns from 200	
	to 2,500 population.....	\$305.00

b.	Retail Spirits License for cities and towns from 2,501	
	to 5,000 population.....	\$605.00

c.	Retail Spirits License for cities and towns over 5,000 population.....	\$905.00
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10. Retail Wine License.....	\$1,000.00
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11.	Retail Beer License.....	\$500.00
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12.	Mixed Beverage License.....	\$1,005.00
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(initial license)
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\$905.00

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

1	21.	Agent License.....	\$55.00
2	22.	Employee License.....	\$30.00
3	23.	Industrial License.....	\$23.00
4	24.	Carrier License.....	\$23.00
5	25.	Private Carrier License.....	\$23.00
6	26.	Bonded Warehouse License.....	\$190.00
7	27.	Storage License.....	\$23.00
8	28.	Nonresident, Seller License or Manufacturer's	
9		License.....	\$750.00
10	29.	Manufacturer's Agent License.....	\$55.00
11	30.	Sacramental Wine Supplier License.....	\$100.00
12	31.	Charitable Auction License.....	\$1.00
13	32.	Charitable Alcoholic Beverage License.....	\$55.00
14	33.	Winemaker Self-Distribution License.....	\$750.00
15	34.	Annual Public Event License.....	\$1,005.00
16	35.	One-Time Public Event License.....	\$255.00
17	36.	Small Brewer Self-Distribution License.....	\$750.00
18	37.	Brewpub License.....	\$1,005.00
19	38.	Brewpub Self-Distribution License.....	\$750.00

20 B. 1. There shall be added to the initial or renewal fees for
 21 a Mixed Beverage License an administrative fee, which shall not be
 22 deemed to be a license fee, in the amount of Five Hundred Dollars
 23 (\$500.00), which shall be paid at the same time and in the same
 24 manner as the license fees prescribed by paragraph 10 of subsection

1 A of this section; provided, this fee shall not be assessed against
2 service organizations or fraternal beneficiary societies which are
3 exempt under Section 501(c)(19), (8) or (10) of the Internal Revenue
4 Code.

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

11 C. Notwithstanding the provisions of subsection A of this
12 section:

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

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

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

23 E. All licenses, except as otherwise provided, shall be valid
24 for one (1) year from date of issuance unless revoked or

1 surrendered. Provided, all employee licenses shall be valid for two
2 (2) years.

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

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

- | | | |
|----|--|------------|
| 17 | 1. Nonresident Seller or Manufacturer License..... | \$2,500.00 |
| 18 | 2. Wine and Spirits Wholesaler License..... | \$2,500.00 |
| 19 | 3. Beer Distributor..... | \$1,000.00 |
| 20 | 4. Retail Spirits License for cities and towns | |
| 21 | over 5,000 population..... | \$250.00 |
| 22 | 5. Retail Spirits License for cities and towns | |
| 23 | from 2,501 to 5,000 population..... | \$200.00 |
| 24 | | |

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 shall be deposited in the Alcoholic Beverage Governance Revolving Fund established pursuant to Section ~~431~~ 5-128 of this ~~act~~ 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 consequence of another licensee's failure to maintain a valid license.

SECTION 11. AMENDATORY Section 19, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 2-107), is amended to read as follows:

1 Section 2-107. A. A wine and spirits wholesaler license shall
2 authorize the holder thereof:

3 1. To purchase and import into this state spirits and wines
4 from persons authorized to sell same who are the holders of a
5 manufacturer or nonresident seller license, and their agents who are
6 the holders of manufacturer's agent licenses;

7 2. To purchase spirits and wines from licensed distillers,
8 rectifiers and winemakers in this state;

9 3. To purchase spirits and wines from licensed wholesalers, to
10 the extent set forth in subsections B and C of this section;

11 4. To sell in retail containers in this state to retailers,
12 mixed beverage, caterer, special event, public event, hotel beverage
13 or airline/railroad beverage licensees, spirits and wines which have
14 been received and unloaded at the bonded warehouse facilities of the
15 wholesaler before such sale;

16 5. To sell to licensed wholesalers, to the extent set forth in
17 subsections B and C of this section, spirits and wines which have
18 been received and unloaded at the bonded warehouse facilities of the
19 wholesaler before such sale; and

20 6. To sell spirits and wines out of this state to qualified
21 persons.

22 Provided, however, sales of spirits and wine in containers with
23 a capacity of less than one-twentieth (1/20) gallon by a holder of a
24 wholesaler license shall be in full case lots and in the original

1 unbroken case. Wholesalers shall be authorized to place such signs
2 outside their place of business as are required by Acts of Congress
3 and by such laws and regulations promulgated under such Acts.

4 B. A wholesaler may sell spirits and wine to other wholesalers
5 or purchase spirits and wines from other wholesalers without
6 complying with subsection ~~B~~ A of this ~~subsection~~ section in the case
7 of the sale, purchase or other transfer or acquisition of the entire
8 business of a wholesaler, including the inventory of spirits and
9 wine.

10 C. A wholesaler license shall authorize the holder thereof to
11 ~~operate a single bonded warehouse with a single central office~~
12 ~~together with delivery facilities at a location in this state only:~~

13 1. Maintain not more than three (3) self-owned or leased and
14 self-operated bonded warehouses within this state. All invoices
15 shall be stored at the principal place of business for which the
16 wholesaler license was granted; and

17 2. Accept as payment cash, personal check, cashier's check,
18 money order or electronic fund transfer from persons licensed to
19 purchase alcoholic beverages; provided, a wholesaler shall not be
20 permitted to accept payment by credit card.

21 SECTION 12. AMENDATORY Section 20, Chapter 366, O.S.L.
22 2016 (37A O.S. Supp. 2016, Section 2-108), is amended to read as
23 follows:
24

1 Section 2-108. A. A beer distributor license shall authorize
2 the holder thereof:

3 1. To purchase and import into this state beer from persons
4 authorized to sell the same who are the holders of manufacturer's
5 licenses, and their agents who are the holders of manufacturer's
6 agent licenses;

7 2. To purchase beer from licensed brewers and beer distributors
8 in this state;

9 3. To sell in retail containers to retailers, mixed beverage,
10 caterer, special event, public event, hotel beverage and
11 airline/railroad beverage licensees in this state, beer which has
12 been received, unloaded and stored at the holder's self-owned or
13 leased and self-operated ~~warehouse facilities~~ warehouses before such
14 sale, unless otherwise permitted by this section; and

15 4. To sell beer in this state to beer distributors and out of
16 this state to qualified persons, including federal instrumentalities
17 and voluntary associations of military personnel on federal enclaves
18 in this state over which this state has ceded jurisdiction.

19 B. In the event that no in-state beer distributor for a
20 particular brewer is willing to deliver beer to a county or counties
21 located within the state, the ABLE Commission may grant an economic
22 hardship exemption to an out-of-state beer distributor for a
23 particular brewer and waive the at-rest requirement set forth in
24 this section, upon a good-faith showing that:

1 1. It is economically infeasible or impractical for an in-state
2 beer distributor for a particular brewer to deliver to the county or
3 counties due to remoteness, or population, or both;

4 2. No in-state beer distributor of a particular manufacturer
5 objects to the waiver within thirty (30) days of receiving written
6 notice of the economic hardship application sent by the ABLE
7 Commission; and

8 3. The out-of-state beer distributor agrees to pay all
9 necessary licensing fees and remit all applicable taxes to the State
10 of Oklahoma.

11 C. The economic hardship exemption provided for in subsection B
12 of this section shall renew annually, provided that no in-state beer
13 distributor for a particular brewer submits an executed distribution
14 agreement to assume responsibility to distribute the beer in the
15 subject county or counties at least sixty (60) days prior to the
16 renewal date of the exemption. The in-state beer distributor who
17 has executed a distribution agreement to assume responsibility to
18 distribute beer in the subject territory shall compensate the out-
19 of-state distributor the fair market value of the distribution
20 rights of the territory as determined pursuant to Section ~~78~~ 3-108
21 of this ~~act~~ title.

22 D. Provided, nothing in this section shall require an Oklahoma
23 licensed beer distributor with an Oklahoma designated territory on
24 the effective date of this act to meet the hardship provisions in

subsections B and C of this section to continue to operate as a licensed Oklahoma beer distributor.

SECTION 13. AMENDATORY Section 38, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 2-126), is amended to read as follows:

Section 2-126. A storage license may be issued to a holder of a brewer, distiller, winemaker, rectifier, wine or spirits wholesaler, beer distributor, nonresident seller, mixed beverage, caterer, public event or hotel beverage license and shall authorize the holder thereof to store alcoholic beverages in a public warehouse holding a bonded warehouse license. The holder of a small brewer license or brewpub license shall not be required to obtain a storage license to store beer within the limits set forth in Section ~~3~~ 1-103 of this ~~act~~ title. No goods, wares or merchandise other than alcoholic beverages may be stored in the same warehouse with alcoholic beverages in private warehouses owned or leased and operated by such licensees elsewhere than on their licensed premises. Provided:

1. A storage license issued to a beer distributor shall permit the storage of beer and permit the sale and delivery to retailers from the premises covered by such license;

2. Any licensee who is the holder of a mixed beverage/caterer combination license or the holder of a mixed beverage license and a hotel beverage license who is issued a storage license shall store

1 all inventories of alcoholic beverages either on the premises of the
2 mixed beverage establishment or in the warehouse;

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

6 4. A storage license shall be required for a public event
7 licensee storing alcoholic beverages for use at a subsequent event;
8 and

9 ~~5. Notwithstanding the provisions of this section or any other~~
10 ~~provision of this act, a licensee who wholly owns more than one~~
11 ~~licensed mixed beverage establishment may store alcoholic beverages~~
12 ~~for each of the licensed establishments in one location under one~~
13 ~~storage license. Alcoholic beverages purchased and stored pursuant~~
14 ~~to the provisions of a storage license for one licensed mixed~~
15 ~~beverage establishment may be transferred by a licensee to another~~
16 ~~licensed mixed beverage establishment which is wholly owned by the~~
17 ~~same licensee. Notice of such a transfer shall be given in writing~~
18 ~~to the Oklahoma Tax Commission and the ABLE Commission within three~~
19 ~~(3) business days of the transfer. The notice shall clearly show~~
20 ~~the quantity, brand and size of every transferred bottle or case.~~

21 SECTION 14. AMENDATORY Section 78, Chapter 366, O.S.L.
22 2016 (37A O.S. Supp. 2016, Section 3-108), is amended to read as
23 follows:
24

1 Section 3-108. A. The provisions of this section shall be in
2 effect except as otherwise provided in Article XXVIII A of the
3 Oklahoma Constitution.

4 B. Subject to the provisions of subsection D of this section,
5 every licensed brewer or cider manufacturer authorized to sell its
6 beer or cider in this state shall:

7 1. Enter into a distributor agreement with a licensed
8 distributor, as defined herein, to sell the designated brands,
9 including brand extensions, of the brewer or cider manufacturer.
10 The agreement shall designate the sales territory of that licensed
11 distributor and the designated brands to be sold by the licensed
12 distributor. All such distributor agreements shall specifically
13 authorize this sale of the designated brands by a licensed
14 distributor within that sales territory. All such distributor
15 agreements shall further provide that the licensed manufacturer who
16 desires to sell a brand extension of a low-point beer in Oklahoma
17 must assign the low-point beer brand extension to the licensed
18 distributor to whom the licensed manufacturer granted the exclusive
19 sales territory to the low-point beer brand from which the brand
20 extension resulted;

21 2. Sell its registered and approved designated brands only to a
22 licensed distributor with whom that brewer or cider manufacturer has
23 a distributor agreement designating the sales territory of the
24

1 licensed distributor and the designated brands to be sold by the
2 licensed distributor;

3 3. Authorize only one licensed distributor for each designated
4 sales territory. Such licensed distributor shall be the only
5 licensed distributor for the designated brands of the authorizing
6 brewer or cider manufacturer within that designated sales territory;
7 and

8 4. Designate who is responsible for the distribution of its
9 designated brands.

10 C. Subject to the provisions of subsection D of this section,
11 any and all licensed distributors possessing the rights to
12 distribute a low-point beer brand in a specific territory prior to
13 the introduction of that low-point beer's correlating beer brand
14 extension in that specific territory shall retain the right to
15 distribute the low-point beer from which the brand extension
16 resulted.

17 D. 1. No later than ~~sixty (60) days after the effective date~~
18 ~~of this act~~ August 2, 2018, a brewer shall assign the exclusive
19 right to distribute a beer brand, including brand extensions
20 thereof, to the low-point beer distributor who was, prior to the
21 effective date of this act, assigned the exclusive distribution
22 rights to the low-point beer from which the brand extension arose
23 without charge or payment of compensation, unless the low-point beer
24 distributor is, on the effective date of this act, a brewer of beer

1 or low-point beer and has therefore been distributing low-point beer
2 pursuant to a license to so distribute, subject to the provisions of
3 subsection E of this section. This subsection shall not apply to a
4 small brewer as defined in Section ~~3~~ 1-103 of this ~~act~~ title.

5 2. With respect to brand extensions which arise after ~~the~~
6 ~~effective date of this act~~ October 1, 2018, the brewer or cider
7 manufacturer shall assign the exclusive right to distribute the
8 brand extension to the distributor who has been assigned the
9 exclusive distribution rights to the beer or cider from which the
10 brand extension arose, without charge or payment of compensation.

11 3. With respect to a brand of beer or cider which was, prior to
12 April 15, 2017, distributed in this state only as strong beer or
13 cider pursuant to the Alcoholic Beverage Control Act then in effect,
14 if a low-point version of the brand is introduced after April 15,
15 2017, no later than August 2, 2018, the brewer or cider manufacturer
16 shall assign the exclusive rights to distribute the low-point
17 version of the brand to the distributor who was, immediately prior
18 to the introduction of the low-point version of the brand, assigned
19 the exclusive distribution rights to the strong version of the brand
20 without charge or payment of compensation.

21 4. No later than ~~sixty (60) days after the effective date of~~
22 ~~this act~~ August 2, 2018, with respect to dual strength beer, the
23 brewer thereof shall assign the exclusive right to distribute the
24 brands represented by the dual strength beer to either the low-point

1 beer distributor or the nonresident seller who had theretofore been
2 assigned the exclusive distribution rights in the territory to
3 either version of the dual strength beer; provided, however,
4 whichever party is selected by the brewer must compensate the party
5 that was not selected by the brewer for the loss of the distribution
6 rights with respect to that particular territory. Whichever party
7 is selected shall obtain the requisite distributor license and shall
8 be subject to the provisions of this act.

9 ~~4.~~ 5. Compensation for the purposes of this provision shall be
10 the fair market value of the party losing its distribution rights
11 with respect to the beer within that specific territory. Fair
12 market value shall be determined as set forth in Section ~~81~~ 3-111 of
13 this ~~act~~ title and shall take into account all aspects of brand
14 valuation, including but not limited to:

- 15 a. the diminished value of the distribution of one
16 version of beer as a consequence of the subsequent
17 introduction of the other version,
- 18 b. the expected annual sales and earnings of the
19 distributor agreement,
- 20 c. the length of time the existing distributor held in
21 the distribution sales agreement, and
- 22 d. any other relevant items of value, such as goodwill
23 and going concern.

1 E. If a brewer, whether directly or through an affiliate,
2 maintained one or more licenses to distribute low-point beer in this
3 state prior to the effective date of this act, then up to two ~~(2)~~ of
4 the brewer's low-point beer distribution licenses shall
5 automatically convert to beer distribution licenses upon the
6 effective date of this act, and such brewer shall be permitted to
7 continue to distribute beer in two ~~(2)~~ territories within which it
8 currently distributes without the appointment of a distributor for
9 such period of time as determined by the Legislature and consistent
10 with the Constitution of the State of Oklahoma; provided however, it
11 shall not be permitted to distribute beer outside of the territory
12 unless it enters into a distributor agreement with an independent
13 licensed distributor as provided in paragraph 1 of subsection B of
14 this section. This section shall not apply to small brewers that
15 have elected to self-distribute.

16 SECTION 15. AMENDATORY Section 80, Chapter 366, O.S.L.
17 2016 (37A O.S. Supp. 2016, Section 3-110), is amended to read as
18 follows:

19 Section 3-110. A. A licensed distributor designated as the
20 licensed distributor for a beer brand within a designated sales
21 territory shall present that beer brand for sale to all on-premise
22 licensees on the same price basis and without discrimination and to
23 all off-premise licensees on the same price basis within a
24 particular county and without discrimination. A licensed

1 distributor shall not sell, supply or deliver, either directly or
2 indirectly through a third party, a beer brand to a licensed
3 retailer outside of the designated sales territory of the designated
4 distributor nor to any person the licensed distributor has reason to
5 believe will sell or supply any quantity of the beer brand to any
6 retail location outside of the designated sales territory of the
7 designated distributor.

8 B. All beer shall only be transported by a marked conveyance
9 owned or leased by the licensed distributor and operated by the
10 licensed distributor or an employee of the distributor for the
11 products of a licensed manufacturer within the designated sales
12 territory to the address and location of a licensed retailer within
13 that designated sales territory.

14 C. Any beer sold by the licensed distributor shall not be
15 delivered to, received by or stored at any place other than the
16 address and location of the licensed retailer for which state and
17 local retailer licenses or permits have been issued.

18 D. With the approval of the licensed manufacturer, a licensed
19 distributor may sell the designated brands to a licensed retailer
20 located in a designated sales territory of another licensed
21 distributor if that licensed distributor is temporarily unable for
22 any reason to provide the designated brands of the licensed
23 manufacturer within its designated sales territory.

1 E. All beer purchased by a licensed distributor for resale in
2 this state shall physically come into the possession of the licensed
3 distributor and be unloaded in and distributed from the licensed
4 ~~warehouse~~ warehouses of the licensed distributor located in this
5 state prior to being resold in this state.

6 SECTION 16. AMENDATORY Section 81, Chapter 366, O.S.L.
7 2016 (37A O.S. Supp. 2016, Section 3-111), is amended to read as
8 follows:

9 Section 3-111. A. Except as provided in subsection F of this
10 section, a small brewer is not subject to the termination provisions
11 of this section.

12 B. 1. Except as provided in subsections C, D and E of this
13 section, no brewer shall terminate a distributor agreement with any
14 beer distributor unless all of the following occur:

15 a. the brewer establishes good cause for such
16 termination,

17 b. the beer distributor receives written notification by
18 certified mail, return receipt requested, from the
19 brewer of the alleged noncompliance and is afforded no
20 less than sixty (60) days in which to cure such
21 noncompliance. If not capable of being cured within
22 the sixty-day period, the beer distributor shall begin
23 the cure within the sixty-day period and diligently
24 pursue the cure as promptly as feasible,

- 1 c. the beer distributor fails to cure such noncompliance
2 within the allotted cure period, and
- 3 d. the brewer provides written notice by certified mail,
4 return receipt requested, to the beer distributor of
5 such continued noncompliance. The notification shall
6 contain a statement of the intention of the brewer to
7 terminate the distributor agreement, the reasons for
8 the termination and the date the termination shall
9 take effect.

10 2. If a beer distributor cures an alleged noncompliance within
11 the cure period provided in subparagraph b of paragraph 1 of this
12 subsection, any notice of termination from a brewer to a beer
13 distributor shall be null and void.

14 C. A brewer may immediately terminate a distributor agreement,
15 effective upon furnishing written notification to the beer
16 distributor by certified mail, return receipt requested, for any of
17 the following reasons:

18 1. The beer distributor's failure to pay any account when due
19 and upon written demand by the brewer for such payment, in
20 accordance with agreed payment terms;

21 2. The assignment or attempted assignment by the beer
22 distributor for the benefit of creditors, the institution of
23 proceedings in bankruptcy by or against the beer distributor, the
24

1 dissolution or liquidation of the beer distributor or the insolvency
2 of the beer distributor;

3 3. The revocation or suspension of, or the failure to renew for
4 a period of more than fourteen (14) days, a beer distributor's
5 state, local or federal license or permit to sell beer in this
6 state;

7 4. The beer distributor has been convicted of a felony that, in
8 the brewer's sole judgment, adversely affects the goodwill of the
9 beer distributor or brewer;

10 5. A beer distributor has been convicted of, found guilty of or
11 pled guilty or nolo contendere to, a charge of violating a law or
12 regulation of the United States or of this state if it materially
13 and adversely affects the ability of the beer distributor or brewer
14 to continue to sell its beer in this state;

15 6. Any attempted transfer of ownership of the beer distributor,
16 stock of the beer distributor or stock of any parent corporation of
17 the beer distributor, or any change in the beneficial ownership or
18 control of any entity having control of the beer distributor,
19 without obtaining the prior written approval of the brewer, which
20 may not be unreasonably withheld, except as may otherwise be
21 permitted pursuant to a written agreement between the parties;

22 7. Fraudulent conduct in the beer distributor's dealings with
23 the brewer of beer, including the intentional sale of beer outside
24 the brewer's established quality standards;

1 8. Cessation of the beer distributor to conduct business for
2 five (5) consecutive business days, unless conducting the business
3 is prevented or rendered impractical due to events beyond the
4 distributor's reasonable control as a result of an act of God, an
5 insured casualty, war or a condition of national, state or local
6 emergency; or

7 9. Any sale of beer, directly or indirectly, to customers
8 located outside the territory assigned to the beer distributor by
9 the brewer unless expressly authorized by the brewer.

10 Provided, the beer distributor shall have the opportunity to
11 sell the brewer's brands for one hundred twenty (120) days after
12 termination in accordance with the distributor agreement.

13 D. The brewer shall have the right to terminate an agreement
14 with a beer distributor at any time by giving the beer distributor
15 at least ninety-days' written notice by certified mail, return
16 receipt requested; provided, the brewer shall give a similar notice
17 to all other beer distributors in all other states who have entered
18 into the same distributor agreement with the brewer.

19 E. If a particular brand of beer is transferred by purchase or
20 otherwise from a brewer to a successor brewer, the following shall
21 occur:

22 1. The successor brewer shall become obligated to all of the
23 terms and conditions of the agreement in effect on the date of
24 succession. This subsection applies regardless of the character or

1 form of the succession. A successor brewer has the right to
2 contractually require its beer distributor to comply with
3 operational standards of performance, if the standards are uniformly
4 established for all of the successor brewer's distributors. A
5 successor brewer may, upon written notice, terminate its agreement,
6 in whole or in part, with a beer distributor of the brewer it
7 succeeded, for the purpose of transferring the distribution rights
8 in the beer distributor's territory to a new beer distributor,
9 provided that the successor beer distributor first pays to the
10 existing beer distributor the fair market value of the existing
11 distributor's business with respect to the terminated brand or
12 brands;

13 2. If the successor brewer decides to terminate its agreement
14 with the existing beer distributor for purposes of transfer, the
15 successor brewer shall notify the existing beer distributor in
16 writing of the successor brewer's intent not to appoint the existing
17 beer distributor for all or part of the existing beer distributor's
18 territory. The successor brewer shall mail the notice of
19 termination by certified mail, return receipt requested, to the
20 existing beer distributor. The successor brewer shall include in
21 the notice the names, addresses and telephone numbers of the
22 successor beer distributor or distributors;

23 3. a. the successor beer distributor shall negotiate with
24 the existing beer distributor to determine the fair

1 market value of the existing beer distributor's right
2 to distribute in the existing beer distributor's
3 territory. The successor beer distributor and the
4 existing beer distributor shall negotiate the fair
5 market value in good faith, and

6 b. the existing beer distributor shall continue to
7 distribute in good faith until payment of the
8 compensation agreed to under subparagraph a of this
9 paragraph, or awarded under paragraph 4 of this
10 subsection, is received; and

11 4. a. if the successor beer distributor and the existing
12 beer distributor fail to reach a written agreement on
13 the fair market value within thirty (30) days after
14 the existing beer distributor receives the notice
15 required pursuant to paragraph 2 of this subsection,
16 the successor beer distributor or the existing beer
17 distributor shall send a written notice to the other
18 party requesting arbitration pursuant to the Uniform
19 Arbitration Act, Part 2 of Article 22 of Title 13,
20 C.R.S. Arbitration shall be held for the purpose of
21 determining the fair market value of the existing beer
22 distributor's right to distribute in the existing beer
23 distributor territory,
24

- b. notice of intent to arbitrate shall be sent, as provided in subparagraph a of this paragraph, not later than forty (40) days after the existing beer distributor receives the notice required pursuant to paragraph 2 of this subsection. The arbitration proceeding shall conclude not later than sixty (60) days after the date the notice of intent to arbitrate is mailed to a party, unless this time is extended by mutual agreement of the parties and the arbitrator,
- c. any arbitration held pursuant to this subsection shall be conducted in a city within this state that:
- (1) is closest to the existing beer distributor, and
 - (2) has a population of more than twenty thousand (20,000) people,
- d. any arbitration held pursuant to this paragraph shall be conducted before one impartial arbitrator to be selected by the American Arbitration Association or its successor. The arbitration shall be conducted in accordance with the rules and procedures of the Uniform Arbitration Act, Part 2 of Article 22 of Title 13, C.R.S.,
- e. an arbitrator's award in any arbitration held pursuant to this paragraph shall be monetary only and shall not enjoin or compel conduct. Any arbitration held

1 pursuant to this paragraph shall be in lieu of all
2 other remedies and procedures,

3 f. the cost of the arbitrator and any other direct costs
4 of an arbitration held pursuant to this paragraph
5 shall be equally divided by the parties engaged in the
6 arbitration. All other costs shall be paid by the
7 party incurring them,

8 g. the arbitrator in any arbitration held pursuant to
9 this paragraph shall render a written decision not
10 later than thirty (30) days after the conclusion of
11 the arbitration, unless this time is extended by
12 mutual agreement of the parties and the arbitrator.
13 The decision of the arbitrator is final and binding on
14 the parties. The arbitrator's award may be enforced
15 by commencing a civil action in any court of competent
16 jurisdiction. Under no circumstances may the parties
17 appeal the decision of the arbitrator,

18 h. an existing beer distributor or successor beer
19 distributor who fails to participate in the
20 arbitration hearings in any arbitration held pursuant
21 to this paragraph waives all rights the existing beer
22 distributor or successor beer distributor would have
23 had in the arbitration and is considered to have
24 consented to the determination of the arbitrator, and

1 i. if the existing beer distributor does not receive
2 payment from the successor beer distributor of the
3 settlement or arbitration award required under
4 paragraph 2 or 3 of this subsection within thirty (30)
5 days after the date of the settlement or arbitration
6 award:

7 (1) the existing beer distributor shall remain the
8 beer distributor in the existing beer
9 distributor's territory to at least the same
10 extent that the existing beer distributor
11 distributed the beer immediately before the
12 successor brewer acquired rights to the brand,
13 and

14 (2) the existing beer distributor is not entitled to
15 the settlement or arbitration award.

16 F. 1. In addition to termination rights that may be set forth
17 in a distributor agreement, a small brewer who manufactures less
18 than twenty-five thousand ~~(25,000)~~ barrels of beer annually may
19 terminate a distributor agreement with any beer distributor provided
20 that, prior to the effective date of the termination, the small
21 brewer pays the beer distributor the fair market value of the
22 distribution rights which will be lost or diminished by reason of
23 the termination.

1 2. If such small brewer and beer distributor cannot mutually
2 agree to the fair market value of the applicable distribution rights
3 lost or diminished by reason of the termination, then the brewer
4 shall pay the beer distributor a good faith estimate of the fair
5 market value of the applicable distribution rights.

6 3. If the beer distributor being terminated under ~~subparagraph~~
7 paragraph 2 of this subsection disputes that the payment made by the
8 small brewer was less than the fair market value of the distribution
9 rights, then the beer distributor may within forty-five (45) days of
10 termination submit the question of fair market value of the
11 applicable distribution rights lost or diminished by reason of the
12 termination to binding arbitration before a panel of three neutral
13 arbitrators appointed in accordance with the commercial arbitration
14 rules of the American Arbitration Association, which panel shall
15 determine by majority decision whether the small brewer's payment
16 meets the requirements of ~~subparagraph~~ paragraph 2 of this
17 subsection.

18 4. If the arbitration panel rules that the payment made by the
19 small brewer to the beer distributor upon termination was less than
20 the fair market value of distribution rights lost or diminished by
21 reason of the termination, then the small brewer must pay the beer
22 distributor the difference between the payment made to the beer
23 distributor and the determined fair market value plus interest.
24

1 5. If the arbitration panel rules that the payment made by the
2 small brewer to the beer distributor upon termination was more than
3 the fair market value of distribution rights lost or diminished by
4 reason of the termination, then the beer distributor must pay the
5 small brewer the difference between the payment made to the beer
6 distributor and the determined fair market value, plus interest.

7 6. All arbitration fees and expenses shall be equally divided
8 among the parties to the arbitration, except if the arbitration
9 panel determines that the small brewer's payment upon termination
10 was not a good-faith estimate of the fair market value, then the
11 panel may award up to one hundred percent (100%) of the arbitration
12 costs to the small brewer.

13 G. 1. Any beer distributor or brewer who is aggrieved by a
14 violation of any provision of subsections B and D of this section
15 shall be entitled to recovery of damages caused by the violation.
16 Except for a dispute arising under subsection E of this section,
17 damages shall be sought in a civil action in any court of competent
18 jurisdiction.

19 2. Any dispute arising under subsections B and D of this
20 section may also be settled by such dispute resolution procedures as
21 may be provided by a written agreement between the parties.

22 H. Nothing in this section shall be construed to limit or
23 prohibit good-faith settlements voluntarily entered into by the
24 parties.

1 I. Nothing in this section shall be construed to give a beer
2 distributor any right to compensation if an agreement with the beer
3 distributor is terminated by a brewer pursuant to subsections B, C
4 and D of this section.

5 J. No brewer shall require any beer distributor to waive
6 compliance with any provision of the Oklahoma Alcoholic Beverage
7 Control Act.

8 K. No brewer shall charge or accept, and no beer distributor
9 shall pay or provide, any money, property, gratuity, rebate, free
10 goods, shipping charges different than those charged for all beer
11 distributors, allowances, thing of value or inducement from a beer
12 distributor in exchange for the brewer entering into a distributor
13 agreement with the beer distributor. However, a brewer who also
14 holds a beer distributor license and desires to sell all or a
15 portion of its beer distribution rights and business, or a holder of
16 small brewer license who desires to change its election from self-
17 distribution to the use of a distributor agreement may accept a
18 payment for the fair market value of its existing and established
19 distribution business in the subject territory.

20 L. This section shall apply to any agreement entered into and
21 any renewals, extensions, amendments or conduct constituting a
22 modification of a distributor agreement by a brewer or cider
23 manufacturer existing on or after the effective date of this act.
24

1 M. Where a cider manufacturer distributes cider through a beer
2 distributor, the rights and obligations of the cider manufacturer,
3 the distributor, a successor cider manufacturer and a successor
4 distributor shall be the same as the rights and obligations provided
5 in this section for a brewer, beer distributor, successor brewer and
6 successor beer distributor.

7 SECTION 17. AMENDATORY Section 86, Chapter 366, O.S.L.
8 2016 (37A O.S. Supp. 2016, Section 3-116), is amended to read as
9 follows:

10 Section 3-116. A. Any manufacturer or subsidiary of a
11 manufacturer who markets its products solely through a subsidiary or
12 subsidiaries, a distiller, rectifier, bottler, winemaker or importer
13 of alcoholic beverages, bottled or made in a foreign country, either
14 within or without this state, may sell such brands or kinds of
15 alcoholic beverages to every licensed wine and spirits wholesaler
16 who desires to purchase the same, on the same price basis and
17 without discrimination or inducements, and shall further be required
18 to sell such beverages only to those persons licensed as wine and
19 spirits wholesalers.

20 B. The provisions of subsection A of this section shall not
21 apply to a brewer.

22 C. No manufacturer shall require a wine and spirits wholesaler
23 or beer distributor to purchase any alcoholic beverages or any
24 goods, wares or merchandise as a condition to the wine and spirits

1 wholesaler or beer distributor obtaining or being entitled to
2 purchase any alcoholic beverages.

3 Violation of this section shall be a misdemeanor. Conviction
4 hereunder shall automatically revoke the violator's license.

5 D. In the event a manufacturer or nonresident seller has not
6 designated a wine and spirits wholesaler to sell its product in the
7 state, the product shall be posted in accordance with the following:

8 1. On the first business day of each month, the manufacturer
9 shall post with the ABLE Commission the price of all wine and
10 spirits it proposes to offer for sale to licensed wine and spirit
11 wholesalers in this state. All prices shall become effective on the
12 first business day of the following month and shall remain in effect
13 and unchanged for a period of not less than one (1) month. The
14 posting shall be submitted on a form approved by the ABLE Commission
15 and shall identify the brand, size, alcohol content and price of
16 each item intended to be offered for sale. No change or
17 modification of the posted price shall be permitted except upon
18 written permission from the ABLE Commission based on good cause
19 shown;

20 2. When a new item is registered, or an old item is
21 discontinued, or any change is made by a manufacturer or nonresident
22 seller as to price, age, proof, label or type of bottle of any item
23 offered for sale in this state, such new item, discontinued item or
24 change in price, age, proof, label or type of bottle of any item

1 shall be listed separately on the cover page of the price schedule
2 and, in the case of prices changed, shall reflect both the old and
3 the new price of the item changed. All new items and changes as to
4 age, proof, label or type of bottle in which any item is offered for
5 sale shall first be submitted in writing to the ABLE Commission for
6 approval under such requirements as it may deem proper. Approval or
7 disapproval of price changes shall not be required if filed in
8 conformity with the provisions of this subsection.

9 a. In addition to the foregoing requirements, the
10 manufacturer shall, at the same time, on regular forms
11 provided by the ABLE Commission, re-register all items
12 of alcoholic beverage which the manufacturer had
13 registered and offered for sale in this state during
14 the previous price period.

15 b. A short form of price posting may be permitted by the
16 ABLE Commission for any price period in which no new
17 item is offered or old item discontinued, or change is
18 made in the price, age, proof, label or type of bottle
19 of any item offered by any manufacturer. Such short
20 form shall contain only such statements as the
21 Director may require or permit;

22 3. The brand name, size, proof and type of alcoholic beverages
23 must be shown on each container sold in this state;
24

1 4. No brand of alcoholic beverage shall be listed on a price
2 list or posting in more than one place, or offered for sale by more
3 than one method, or at more than one price, except as provided
4 hereafter:

5 a. a manufacturer who has posted F.O.B. prices from a
6 foreign shipping point shall also list the same
7 item(s) at an F.O.B. point within the continental
8 United States. Only one United States F.O.B. point
9 shall be permitted, and

10 b. a manufacturer may list on their price list or posting
11 an item of specific size that may be packaged in more
12 than one type or design container, provided that the
13 containers being offered have been approved by the
14 ABLE Commission;

15 5. The manufacturer shall sell to the wine and spirits
16 wholesalers all items of wine and spirits at the current posted
17 price in effect on the date of the shipment as shown on the
18 manifest, bill of lading or invoice;

19 6. A full and correct copy of each said price registration
20 shall be transmitted to wine and spirits wholesalers on the same day
21 such prices are filed with or mailed to the ABLE Commission. Proof
22 of such mailing or delivery shall be furnished the ABLE Commission
23 by the manufacturer with the price registration or upon request;
24

1 7. The sale, or offer to sell, of any item of alcoholic
2 beverage by a manufacturer to a wine and spirits wholesaler at a
3 price not in compliance with the price posted with the ABLE
4 Commission may be deemed a violation; and

5 8. This subsection shall not apply to a manufacturer that has
6 designated a wine and spirits wholesaler to sell its product in the
7 state.

8 SECTION 18. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 3-116.1 of Title 37A, unless
10 there is created a duplication in numbering, reads as follows:

11 A. In the event a manufacturer has not designated a wine and
12 spirits wholesaler to sell its product in the state, every wine and
13 spirits wholesaler that sells that product shall comply with the
14 following posting requirements:

15 1. All wine and spirits wholesalers who choose to sell the
16 nondesignated product shall file with the ABLE Commission on the
17 fifteenth day of each posting month a proposed category percentage
18 markup. A percentage markup shall be defined as a percentage of
19 increase or decrease in relation to the wholesaler laid-in-cost for
20 all items in each category. The percentage does not have to be the
21 same for all categories, but in the original posting the percentage
22 shall be the same for all items in the same category;

23 2. The proposed markups shall be computed by percentage in the
24 four categories: Spirits, Cordials and Specialties, Wines-Domestic

1 and Wines-Imported. In reporting to the ABLE Commission, the
2 proposed markups shall be set forth in the following categories and
3 order:

- 4 a. Category 1 - Spirits: Straights, Blends, Bonds, Corn,
5 Rye, Scotch, Canadian, Irish, Vodka, Gin, Rum, Brandy
6 Alcohol and Tequila,
- 7 b. Category 2 - Cordials and Specialties: Cocktails,
8 Cordials, Domestic and Imported and Miscellaneous
9 Specialties,
- 10 c. Category 3 - Wines-Domestic: Vermouth American,
11 Fortified American, Light American and Champagne
12 American, and
- 13 d. Category 4 - Wines-Imported: Vermouth Imported,
14 Fortified Imported, Light French, Light German, Light
15 Other Imported and Champagne Imported;

16 3. When a wine and spirits wholesaler desires to charge for
17 expenses incurred in handling of individual bottles in fractional
18 cases, or for transportation of their alcoholic beverage to persons
19 licensed to purchase the same, the wine and spirits wholesaler shall
20 on the fifteenth day of each posting month include with its proposed
21 percentage posting the separate amounts, if any, to be charged for
22 bottle handling and the amount of transportation, respectively, to
23 be charged per case;

1 4. The proposed posting by the wine and spirits wholesaler
2 shall list the percentage posting, and the handling and
3 transportation cost without discrimination to all licensees
4 regardless of their distance from the wine and spirits wholesaler's
5 warehouse;

6 5. The ABLE Commission shall immediately upon receipt of all
7 proposed category percentage postings, prepare a summation of the
8 proposal and disseminate an electronic copy to all wine and spirits
9 wholesalers. The summation shall contain the proposed percentage
10 posting for each category, including proposed transportation charges
11 as submitted by each wine and spirits wholesaler;

12 6. After filing the report required by this subsection, any and
13 all wine and spirits wholesalers shall be permitted to register on
14 or before the twenty-fifth day of each posting month an adjusted
15 price. The adjusted price means percentage or individual item
16 prices reported and registered by a wine and spirits wholesaler on
17 or before the twenty-fifth day of the posting month in response to a
18 lower percentage reported and registered by a competitor on the
19 fifteenth day of the month. The adjusted price shall be no lower
20 than the lowest percentage posted on the fifteenth day of said month
21 by any wine and spirits wholesaler;

22 7. The adjusted price posted by a wine and spirits wholesaler
23 in response to the lowest percentage posted by any wine and spirits
24 wholesaler may, but need not be, posted in terms of a percentage

1 and, if not so stated, shall state the price at which the wine and
2 spirits wholesaler proposes to sell each individual item or size of
3 item which he proposes to offer for sale during the posting period.
4 The price postings, except for unmodified percentage markups, shall
5 describe each item by brand, size, age, type and proof. Wines and
6 champagnes shall reflect the alcoholic contents thereof;

7 8. The percentage markup utilized by a wine and spirits
8 wholesaler in calculating its adjusted prices may be at any level
9 between its originally posted percentage markup and the lowest
10 percentage markup originally posted by any other wine and spirits
11 wholesaler, but may not be above its original posting or below the
12 lowest percentage posted by any wine and spirits wholesaler. Any
13 fraction within four (4) decimals in determining final prices of
14 bottles shall be raised to the next higher cent;

15 9. Each wine and spirits wholesaler may, upon the twenty-fifth
16 day of the posting month, adjust his transportation and handling
17 charges to a level no lower than that of a competitor or higher than
18 its initial proposal on the fifteenth day of the posting month.
19 Such bottle handling and transportation charge shall be in effect
20 for the duration of the price posting which it accompanies.
21 Provided, that if a licensee shall order any item in full case lots
22 and the wine and spirits wholesaler does not have in inventory such
23 item in full case lots, no bottle handling charge may be assessed to
24 the licensee for the partial case;

1 10. All wine and spirits wholesalers shall, on the same date of
2 filing an adjusted price posting with the ABLE Commission, transmit
3 electronically a copy of its adjusted prices to each wine and
4 spirits wholesaler in the state;

5 11. A wine and spirits wholesaler may include a minimum order
6 charge of no less than One Dollar (\$1.00) for any order of alcoholic
7 beverages to a retail, mixed beverage, caterer or special event
8 licensee that does not exceed the amount that such wholesaler
9 designates as a minimum order in his proposed price posting. The
10 minimum charge, if it is more than One Dollar (\$1.00), and the
11 amount of the minimum order shall be included in the price posting;

12 12. All price postings, as adjusted, shall become effective on
13 the first day of the following month and remain in effect for a
14 period of two (2) months. No other charge may be assessed by the
15 wholesaler to the licensee except those expressly authorized by the
16 provisions of the Oklahoma Alcoholic Beverage Control Act or the
17 rules of the ABLE Commission;

18 13. A price posting on a new item not previously stocked by a
19 wine and spirits wholesaler shall be filed with the ABLE Commission
20 prior to offering for sale, but no such item shall be listed at a
21 lower price than is then, or will be, in effect during the price
22 period for which the new item is filed, and within the percentage in
23 the proper category of said wine and spirits wholesaler. In the
24 event of a new item posting, mailings to wine and spirits

1 wholesalers and those licensed to purchase wine and spirits in the
2 state, as herein required, shall be sent on the same date as the
3 postings;

4 14. When a wine and spirits wholesaler discontinues an item, or
5 does not have an item in its warehouse or on order, the item shall
6 be deleted from its price posting. When or if the item is restocked
7 or replaced in the inventory of the wine and spirits wholesaler, it
8 shall be reentered into the price postings as would a new item;

9 15. The sale of or the offer to sell alcoholic beverages at the
10 prices quoted in such price posting before the same is in force and
11 effect shall be grounds for the suspension or revocation of the wine
12 and spirits wholesaler's license if the new price varies from the
13 price then in effect; and

14 16. The provisions of this section are severable, and if any
15 provisions of the same shall be void, the decision of the court so
16 holding shall not affect or impair the remaining parts or provisions
17 thereof.

18 B. This section shall not apply to products that have been
19 designated by a manufacturer for distribution by a wine and spirits
20 wholesaler in the state.

21 SECTION 19. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 3-116.2 of Title 37A, unless
23 there is created a duplication in numbering, reads as follows:
24

1 A. In the event a manufacturer has designated a wine and
2 spirits wholesaler to sell its product in the state, the wine and
3 spirits wholesaler shall comply with the following posting
4 requirements: The wine and spirits wholesaler shall submit its
5 line-item price posting for that product no later than the fifteenth
6 day of each month. If the fifteenth day of the month falls on a
7 Saturday, Sunday or a holiday then the wine and spirits wholesaler
8 shall submit its price posting on the next business day. The price
9 posting submitted by the wine and spirits wholesaler shall list the
10 line-item price, handling cost, transportation cost and any other
11 costs that may be associated with the sale or delivery of that item.
12 All prices shall become effective on the first business day of the
13 month following posting and shall remain in effect and unchanged in
14 one-month increments. No change or modification of the posted price
15 shall be permitted except upon written permission from the ABLE
16 Commission based on good cause shown.

17 B. This section shall not apply unless a product has been
18 designated by a manufacturer for distribution by a single wine and
19 spirits wholesaler in the state.

20 SECTION 20. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 3-116.3 of Title 37A, unless
22 there is created a duplication in numbering, reads as follows:

23 A. On the first business day of every month, every wine and
24 spirits wholesaler shall electronically publish and distribute its

1 price catalog to the ABLE Commission, to all licensees who have
2 purchased alcoholic beverages from the wine and spirits wholesaler
3 within the past sixty (60) days, and to any on-premises or off-
4 premises licensee who requests an electronic copy of the same.
5 Every price catalog shall contain the sales price of every item
6 offered for sale by brand name, size, proof and type of alcoholic
7 beverage, as well as any transportation, handling and other charges
8 to be assessed for the delivery of the products. In addition, every
9 price catalog shall contain the effective date of the price catalog,
10 as well as the name, physical address, office phone number and
11 facsimile number of the wine and spirits wholesaler.

12 B. The wine and spirits wholesaler shall not alter or modify
13 its price catalog without the prior written consent of the ABLE
14 Commission for good cause shown. The ABLE Commission may also
15 approve a modification to a wine and spirits wholesaler's price
16 catalog in the event a manufacturer is allowed to change the price
17 of a product within the posting period. For designated products,
18 the price amendment shall become effective on the first business day
19 of the following calendar week. For nondesignated products, the
20 price amendment shall become effective on the first day of the
21 second month of the sixty-day posting period. The wine and spirits
22 wholesaler shall publish and distribute all approved price
23 amendments consistent with the requirements set forth in subsection
24 A of this section.

1 SECTION 21. AMENDATORY Section 101, Chapter 366, O.S.L.

2 2016 (37A O.S. Supp. 2016, Section 4-104), is amended to read as
3 follows:

4 Section 4-104. Municipalities are hereby authorized to levy an
5 annual occupational tax for the privilege of operating as a
6 retailer, mixed beverage, beer and wine, caterer, public event or
7 special event licensee, bottle club, manufacturer, wine and spirits
8 wholesaler or beer distributor, within their respective
9 jurisdictions, not to exceed the state license fee for such
10 licensees; provided, the tax shall be levied only by the
11 municipality in which such licensee has its principal place of
12 business. This section shall not give any municipality any right to
13 determine or regulate the issuance of any license, except as
14 specifically provided for in this section, as the ABLE Commission
15 shall have exclusive authority as to issuance and regulations of
16 licenses. No municipality may prescribe rules or regulations in
17 conflict with or in addition to the statutes of this state or the
18 rules of the ABLE Commission. No licensee shall be held liable for
19 engaging in business otherwise authorized under this title with any
20 other retailer, mixed beverage, beer and wine, caterer, public event
21 or special event licensee, bottle club, manufacturer, wine and
22 spirits wholesaler or beer distributor solely because such other
23 party has failed to pay any occupational tax due under this section.
24

1 Municipalities which levy an occupational tax under this section
2 shall make an annual report to the ABLE Commission, covering the
3 fiscal year, showing the number and class of licensees subject to
4 the tax authorized by this section, and the amount of money received
5 therefrom, which information is to be included in the annual report
6 of the ABLE Commission submitted to the Governor, and transmitted to
7 the Legislature.

8 SECTION 22. AMENDATORY Section 102, Chapter 366, O.S.L.
9 2016 (37A O.S. Supp. 2016, Section 4-105), is amended to read as
10 follows:

11 Section 4-105. Counties are hereby authorized to levy an annual
12 occupational tax for the privilege of operating as a mixed beverage,
13 beer and wine, caterer, public event or special event licensee or as
14 a bottle club, within their respective jurisdictions and not located
15 in a municipality levying an occupation tax as provided by Section
16 ~~4-104~~ 4-104 of this ~~act~~ title, not to exceed the state license fee for
17 such licensees; provided, the tax shall be levied only by the county
18 in which such licensee has its principal place of business. All
19 revenues derived from any such annual occupational tax shall be
20 deposited in the general revenue fund of the county. This section
21 shall not give any county any right to determine or regulate the
22 issuance of any license, except as specifically provided for in this
23 section, as the ABLE Commission shall have exclusive authority as to
24 issuance and regulations of licenses. No county may prescribe rules

1 or regulations in conflict with or in addition to the statutes of
2 this state or the rules of the ABLE Commission. No licensee shall
3 be held liable for engaging in business otherwise authorized under
4 this act with any other mixed beverage, beer and wine, caterer,
5 public event or special event licensee or bottle club solely because
6 such other party has failed to pay any occupational tax due under
7 this section.

8 Counties which levy an occupational tax under this section shall
9 make an annual report to the ABLE Commission, covering the fiscal
10 year, showing the number and class of licensees subject to the tax,
11 and the amount of money received therefrom, which information is to
12 be included in the annual report of the ABLE Commission submitted to
13 the Governor, and transmitted to the Legislature.

14 SECTION 23. AMENDATORY Section 135, Chapter 366, O.S.L.
15 2016 (37A O.S. Supp. 2016, Section 5-132), is amended to read as
16 follows:

17 Section 5-132. A. Except as provided in subsection D of this
18 section, no alcoholic beverage shall be labeled, offered or
19 advertised for sale in this state unless in accordance with rules
20 promulgated pursuant to the provisions of Section ~~133~~ 5-130 of this
21 ~~act~~ title and unless the brand label shall have been registered with
22 and approved by the ABLE Commission and the appropriate fee paid as
23 provided for in this section.

1 B. An application for registration of a brand label shall be
2 filed by and fees paid by the manufacturer or brewer of the brand if
3 the manufacturer or brewer is licensed by the ABLE Commission;
4 however, if the manufacturer is represented by a manufacturer's
5 agent ~~or~~, licensed nonresident seller, wine and spirits wholesaler
6 or beer distributor, then the manufacturer's agent ~~or~~, nonresident
7 seller, wine and spirits wholesaler or beer distributor shall submit
8 each label for each product the manufacturer offers for sale in this
9 state, along with payment of the brand registration fee; provided,
10 the manufacturer or brewer must fully reimburse the manufacturer's
11 agent, licensed nonresident seller, wine and spirits wholesaler or
12 beer distributor for the cost of the brand registration fee within
13 forty-five (45) days of the time the original brand registration fee
14 is paid. Cordials and wines which differ only as to age or vintage
15 year, as defined by such rules, shall be considered the same brand,
16 and those that differ as to type or class may be considered the same
17 brand by the ABLE Commission where consistent with the purposes of
18 this section.

19 C. The application for registration of a brand label shall be
20 filed on a form prescribed by the ABLE Commission, and shall contain
21 such information as the ABLE Commission shall require. Such
22 application shall be accompanied by a certified check, bank
23 officers' check or draft or money order in the amount of the annual
24

1 registration fee, or the properly prorated portion thereof
2 prescribed by this section.

3 D. 1. The annual fee for registration of any brand label for
4 spirits shall be Three Hundred Seventy-five Dollars (\$375.00). The
5 annual fee for registration of any brand label for beer shall be Two
6 Hundred Dollars (\$200.00). The annual fee for registration of any
7 brand label for wine made in the United States, or for registration
8 of any category of imported wine as defined by the Tax Commission,
9 shall be Two Hundred Dollars (\$200.00). Beer manufactured in this
10 state shall be exempt from brand label registration fees.

11 2. Each brand label registered and approved pursuant to this
12 section shall be valid for a term of up to one (1) year, expiring on
13 the June 30 next following registration, and may be renewed for
14 subsequent terms of one (1) year beginning on the July 1 following
15 the initial registration. Brand registration fees for labels
16 registered after July 1 may be prorated through the following June
17 30 on a quarterly basis. The brand registration fee shall not be
18 transferable.

19 E. If the ABLE Commission shall deny the application for
20 registration of a brand label, it shall return the registration fee
21 to the applicant, less twenty-five percent (25%) of such fee.

22 F. The ABLE Commission may at any time exempt any discontinued
23 brand from fee provisions of this section where a manufacturer or
24 wholesaler has an inventory of one hundred cases or less of liquor

1 or wine and five hundred cases or less of beer, and certifies to the
2 ABLE Commission in writing that such brand is being discontinued.

3 G. No private labels or control labels shall be approved for
4 sale in this state.

5 SECTION 24. AMENDATORY Section 144, Chapter 366, O.S.L.
6 2016 (37A O.S. Supp. 2016, Section 6-104), is amended to read as
7 follows:

8 Section 6-104. No wine or spirits wholesaler licensee shall
9 sell or deliver, and no wine or spirits retail licensee shall
10 receive:

11 1. ~~Sell or deliver any~~ Any amount of spirits or wines to any
12 licensee on ~~Saturday or~~ Sunday; or

13 2. ~~Sell or deliver any~~ Any amount of spirits or wines to any
14 licensee on New Year's Day, ~~Memorial Day,~~ the Fourth of July, ~~Labor~~
15 ~~Day,~~ Thanksgiving Day or Christmas Day.

16 SECTION 25. REPEALER 37 O.S. 2011, Section 163.11, as
17 last amended by Section 1 of this act, is hereby repealed.

18 SECTION 26. REPEALER 37 O.S. 2011, Section 163.18G, as
19 amended by Section 2 of this act, is hereby repealed.

20 SECTION 27. REPEALER 37 O.S. 2011, Section 163.18H, as
21 amended by Section 3 of this act, is hereby repealed.

22 SECTION 28. REPEALER 37 O.S. 2011, Section 163.20, as
23 amended by Section 4 of this act, is hereby repealed.

1 SECTION 29. REPEALER 37 O.S. 2011, Section 521, as last
2 amended by Section 5 of this act, is hereby repealed.

3 SECTION 30. REPEALER 37 O.S. 2011, Section 554.1, as
4 last amended by Section 6 of this act, is hereby repealed.

5 SECTION 31. REPEALER 37 O.S. 2011, Section 554.2, as
6 last amended by Section 7 of this act, is hereby repealed.

7 SECTION 32. REPEALER Section 1 of Enrolled House Bill
8 No. 1540 of the 1st Session of the 56th Oklahoma Legislature, is
9 hereby repealed.

10 SECTION 33. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 14 and 32
11 of this act shall become effective October 1, 2017. Sections 10,
12 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28,
13 29, 30 and 31 of this act shall become effective October 1, 2018.

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