

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 936 By: Bice of the Senate
3 and
4 McEntire of the House
5
6

7 [beer breweries - brand label requirements -
8 charitable collaboration beer - taxation -
9 codification - effective date]

10 AMENDMENT NO. 1. Delete the stricken title, enacting clause and
11 entire bill and replace with:

12 "An Act relating to alcoholic beverages; amending
13 Section 135, Chapter 366, O.S.L. 2016, as amended by
14 Section 23, Chapter 364, O.S.L. 2017 (37A O.S. Supp.
15 2018, Section 5-132), which relates to brand labels;
16 allowing private or control labels for certain
17 beers; authorizing the transfer of certain alcoholic
18 materials in certain circumstances; requiring
19 transfers to comply with federal law and
20 regulations; requiring transferred items to bear
21 certain numbers; abating taxation until certain
22 occurrence; defining certain term; authorizing the
23 Oklahoma Tax Commission and the Oklahoma Alcohol and
24 Beverage Laws Enforcement Commission (ABLE
Commission) to conduct inspections and audits;
authorizing the Oklahoma Tax Commission to
promulgate certain rules and forms; creating the
charitable collaboration brewer license; granting
certain authorities to charitable collaboration
brewer licensees; disallowing prohibitions on
certain cross-licensing; limiting the cumulative
amount of certain beer that an individual may
sample; directing the designation of an area in
which samples may be offered; restricting sampling to
certain designated areas, certain times, and
individuals of or exceeding a certain age; requiring

1 certain filing with the ABLE Commission; excluding
2 from sales of beer the distribution of samples;
3 acknowledging samples are withdrawals from
4 inventory; authorizing certain cross-licensees to
5 self-distribute certain beers to certain other
6 licensees; authorizing certain simultaneous
7 distribution of certain beer upon notice to the ABLE
8 Commission; directing the ABLE Commission to
9 promulgate rules, forms, and fees; providing a means
10 for the ABLE Commission to evaluate certain
11 applications; requiring display of certain license;
12 requiring the ABLE Commission's approval of certain
13 labels; providing for codification; and providing an
14 effective date.

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

SECTION 1. AMENDATORY Section 135, Chapter 366, O.S.L.
2016, as amended by Section 23, Chapter 364, O.S.L. 2017 (37A O.S.
Supp. 2018, Section 5-132), is amended to read as follows:

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

B. An application for registration of a brand label shall be
filed by and fees paid by the manufacturer or brewer of the brand if
the manufacturer or brewer is licensed by the ABLE Commission;
however, if the manufacturer is represented by a manufacturer's

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

15 C. The application for registration of a brand label shall be
16 filed on a form prescribed by the ABLE Commission, and shall contain
17 such information as the ABLE Commission shall require. Such
18 application shall be accompanied by a certified check, bank
19 officers' check or draft or money order in the amount of the annual
20 registration fee, or the properly prorated portion thereof
21 prescribed by this section.

22 D. 1. The annual fee for registration of any brand label for
23 spirits shall be Three Hundred Seventy-five Dollars (\$375.00). The
24 annual fee for registration of any brand label for beer shall be Two

1 Hundred Dollars (\$200.00). The annual fee for registration of any
2 brand label for wine made in the United States, or for registration
3 of any category of imported wine as defined by the Tax Commission,
4 shall be Two Hundred Dollars (\$200.00). Beer manufactured in this
5 state shall be exempt from brand label registration fees.

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

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

17 F. The ABLE Commission may at any time exempt any discontinued
18 brand from fee provisions of this section where a manufacturer or
19 wholesaler has an inventory of one hundred cases or less of liquor
20 or wine and five hundred cases or less of beer, and certifies to the
21 ABLE Commission in writing that such brand is being discontinued.

22 G. No private labels or control labels shall be approved for
23 sale in this state; except for charity collaboration beer as
24 authorized in Section 3 of this act.

1 SECTION 2. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 5-132.1 of Title 37A, unless
3 there is created a duplication in numbering, reads as follows:

4 For purposes of an approved charitable collaboration beer as
5 authorized in Section 3 of this act, the production of wort and non-
6 retail packaged alcohol products necessary for the development,
7 mixing, fermentation, brewing, storage or retail packaging, in whole
8 or any part thereof, shall be allowed to be transferred-in-bond
9 without taxation between charitable collaborating breweries licensed
10 in this state; provided, all such transfers are made in accordance
11 with applicable federal law and regulations, and, provided further,
12 all such products containing alcohol shall bear the specific license
13 number for the approved charitable collaboration brewery. The
14 Oklahoma Tax Commission shall abate taxes upon notice and
15 application and only until the charitable collaboration beer is
16 packaged for purposes of distribution as may be divided, in whole or
17 any part thereof, between the licensed collaborating breweries.

18 For purposes of this section, "transfer-in-bond" means the
19 movement of alcohol or products containing any percentage of alcohol
20 between licensed bonded brewery facilities without payment of tax.

21 The Tax Commission and the ABLE Commission may conduct such
22 inspections and audits necessary to maintain strict compliance and
23 record keeping during the development, mixing, fermentation,
24 brewing, storage or retail packaging, in whole or any part thereof,

1 of an approved charitable collaboration beer. The Tax Commission
2 shall promulgate rules and forms to exempt and allow transfer-in-
3 bond in accordance with the provisions of this act and ABLE
4 Commission rules.

5 SECTION 3. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 2-102.1 of Title 37A, unless
7 there is created a duplication in numbering, reads as follows:

8 Charitable Collaboration Brewer License.

9 A. A charitable collaboration brewer license shall authorize
10 the collaborating licensed brewers and holders thereof:

11 1. To formulate, manufacture, bottle, package and store the
12 charitable collaboration beer, or any part thereof, on the licensed
13 premises;

14 2. To sell the charitable collaboration beer in this state to
15 holders of beer distributor licenses;

16 3. To sell the charitable collaboration beer out of this state
17 to qualified persons for the sole purpose of fundraising for the
18 stated charitable purposes;

19 4. To sell the charitable collaboration beer in this state to
20 holders of retail licenses;

21 5. To serve free samples of the charitable collaboration beer
22 produced by the collaborating licensed brewers to visitors twenty-
23 one (21) years of age or older on the collaborating brewery licensed
24 premises;

1 6. To sell the charitable collaboration beer produced by the
2 collaborating licensee brewers for either on-premises or off-
3 premises consumption to consumers on the brewery premises, or on
4 premises located contiguous thereto;

5 7. To sell the charitable collaboration beer produced by the
6 collaborating licensed brewers at public events such as trade shows
7 or festivals; and

8 8. To purchase the charitable collaboration beer produced by
9 the collaborating licensed brewers in retail containers from the
10 holder of a beer distributor license to sell or serve in accordance
11 with this section.

12 B. Nothing in this section shall prohibit the holder of a
13 charitable collaboration brewer license from also holding or owning
14 an interest in the holder of a brewpub license.

15 C. For purposes of this section, no visitor may sample more
16 than a total of twelve (12) fluid ounces of the charitable
17 collaboration beer per day. The brewer must restrict the
18 distribution and consumption of charitable collaboration beer
19 samples to an area within the licensed premises designated by the
20 brewer. A current floor plan that includes the designated sampling
21 area must be on file with the ABLE Commission. No visitor under
22 twenty-one (21) years of age shall be permitted to enter this
23 designated sampling area when samples are being distributed or
24 consumed. Samples of the charitable collaboration beer served by a

1 collaborating brewery under this section shall not be considered a
2 sale of beer within the meaning of Article XXVIII-A of the Oklahoma
3 Constitution or Section 1-103 of Title 37A of the Oklahoma Statutes;
4 however, such samples of the charitable collaboration beer shall be
5 considered beer removed or withdrawn from the brewery for use or
6 consumption within the meaning of Section 5-110 of Title 37A of the
7 Oklahoma Statutes for excise tax determination and reporting
8 requirements. Sales and sampling may only occur between the hours
9 of 10:00 a.m. and 2:00 a.m.

10 D. If a small brewer is a licensed charitable collaborating
11 brewer and such small brewer holds a self-distribution license, it
12 shall authorize the holder thereof to distribute the charitable
13 collaboration beer produced to a holder of a retail beer license,
14 retail spirits license, mixed beverage license, beer and wine
15 license, caterer's license, special event license, public event
16 license, charitable auction license or brewpub license. If a small
17 brewer has elected to distribute through a distributor or self-
18 distribute in a subject territory, for purposes of the charitable
19 collaboration brewer license such small brewer and the other
20 collaborating brewer may elect to do both simultaneously in a
21 subject territory upon notice to the ABLE Commission.

22 E. The ABLE Commission shall promulgate rules, forms and fees
23 to implement and enforce the charitable collaboration brewer
24 license.

1 F. When more than one Oklahoma-licensed brewer makes
2 application to the ABLE Commission to develop a charitable
3 collaboration beer offering and seeks to obtain a charitable
4 collaboration brewer license, the ABLE Commission shall evaluate the
5 application based upon any of the following:

6 1. Whether the collaboration has a legitimate charitable
7 purpose in this state, another state or a national charitable
8 effort;

9 2. Whether the formula needs approval by any federal regulatory
10 authority;

11 3. Whether the Oklahoma Tax Commission has been notified of the
12 request for a tax exemption to allow the collaborators to transfer-
13 in-bond products between the licensed premises of the collaborating
14 brewers and whether the Tax Commission approves such transfer-in-
15 bond;

16 4. The license standing of each licensed collaborating brewer
17 in this state, including, but not limited to, any required storage
18 licenses.

19 Upon consideration of the application facts and detailed plans
20 submitted by the collaborating brewers, the ABLE Commission shall
21 make its determination whether or not to issue the charitable
22 collaboration brewer license. Upon approval of a charitable
23 collaboration brewer license, such license shall be issued to both
24 licensed brewers for the development and manufacture of a charitable

1 collaboration beer offering. Each licensed brewer shall be required
2 to post the charitable collaboration brewer license at their
3 licensed premises and such license number shall be clearly affixed
4 to any alcohol products stored or transferred-in-bond between the
5 collaborating breweries. The charitable collaboration beer offering
6 shall require a private label approved by the ABLE Commission
7 according to the label requirements promulgated by the ABLE
8 Commission rules.

9 SECTION 4. This act shall become effective November 1, 2019."

10 Passed the House of Representatives the 23rd day of April, 2019.

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13 Presiding Officer of the House of
14 Representatives

15 Passed the Senate the ____ day of _____, 2019.

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18 Presiding Officer of the Senate

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1 ENGROSSED SENATE
2 BILL NO. 936

By: Bice of the Senate

3 and

4 McEntire of the House

5
6 [beer breweries - brand label requirements -
7 charitable collaboration beer - taxation -
8 codification - effective date]
9

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

11 SECTION 5. AMENDATORY Section 135, Chapter 366, O.S.L.
12 2016, as amended by Section 23, Chapter 364, O.S.L. 2017 (37A O.S.
13 Supp. 2018, Section 5-132), is amended to read as follows:

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

21 B. An application for registration of a brand label shall be
22 filed by and fees paid by the manufacturer or brewer of the brand if
23 the manufacturer or brewer is licensed by the ABLE Commission;
24 however, if the manufacturer is represented by a manufacturer's

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

15 C. The application for registration of a brand label shall be
16 filed on a form prescribed by the ABLE Commission, and shall contain
17 such information as the ABLE Commission shall require. Such
18 application shall be accompanied by a certified check, bank
19 officers' check or draft or money order in the amount of the annual
20 registration fee, or the properly prorated portion thereof
21 prescribed by this section.

22 D. 1. The annual fee for registration of any brand label for
23 spirits shall be Three Hundred Seventy-five Dollars (\$375.00). The
24 annual fee for registration of any brand label for beer shall be Two

1 Hundred Dollars (\$200.00). The annual fee for registration of any
2 brand label for wine made in the United States, or for registration
3 of any category of imported wine as defined by the Tax Commission,
4 shall be Two Hundred Dollars (\$200.00). Beer manufactured in this
5 state shall be exempt from brand label registration fees.

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

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

17 F. The ABLE Commission may at any time exempt any discontinued
18 brand from fee provisions of this section where a manufacturer or
19 wholesaler has an inventory of one hundred cases or less of liquor
20 or wine and five hundred cases or less of beer, and certifies to the
21 ABLE Commission in writing that such brand is being discontinued.

22 G. No private labels or control labels shall be approved for
23 sale in this state; except for charity collaboration beer as
24 authorized in Section 3 of this act.

1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 5-132.1 of Title 37A, unless
3 there is created a duplication in numbering, reads as follows:

4 For purposes of an approved charitable collaboration beer as
5 authorized in Section 3 of this act, the production of wort and non-
6 retail packaged alcohol products necessary for the development,
7 mixing, fermentation, brewing, storage or retail packaging, in whole
8 or any part thereof, shall be allowed to be transferred-in-bond
9 without taxation between charitable collaborating breweries licensed
10 in this state; provided, all such transfers are made in accordance
11 with applicable federal law and regulations, and, provided further,
12 all such products containing alcohol shall bear the specific license
13 number for the approved charitable collaboration brewery. The Tax
14 Commission shall abate taxes upon notice and application and only
15 until the charitable collaboration beer is packaged for purposes of
16 distribution as may be divided, in whole or any part thereof,
17 between the licensed collaborating breweries.

18 For purposes of this section, "transfer-in-bond" means the
19 movement of alcohol or products containing any percentage of alcohol
20 between licensed bonded brewery facilities without payment of tax.

21 The Tax Commission and the ABLE Commission may conduct such
22 inspections and audits necessary to maintain strict compliance and
23 record keeping during the development, mixing, fermentation,
24 brewing, storage or retail packaging, in whole or any part thereof,

1 of an approved charitable collaboration beer. The Tax Commission
2 shall promulgate rules and forms to exempt and allow transfer-in-
3 bond in accordance with the provisions of this act and ABLE
4 Commission rules.

5 SECTION 7. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 2-102.1 of Title 37A, unless
7 there is created a duplication in numbering, reads as follows:

8 Charitable Collaboration Brewer License.

9 A. A charitable collaboration brewer license shall authorize
10 the collaborating licensed brewers and holders thereof:

11 1. To formulate, manufacture, bottle, package and store the
12 charitable collaboration beer, or any part thereof, on the licensed
13 premises;

14 2. To sell the charitable collaboration beer in this state to
15 holders of beer distributor licenses;

16 3. To sell the charitable collaboration beer out of this state
17 to qualified persons for the sole purpose of fundraising for the
18 stated charitable purposes;

19 4. To sell the charitable collaboration beer in this state to
20 holders of retail licenses;

21 5. To serve free samples of the charitable collaboration beer
22 produced by the collaborating licensed brewers to visitors twenty-
23 one (21) years of age or older on the collaborating brewery licensed
24 premises;

1 6. To sell the charitable collaboration beer produced by the
2 collaborating licensee brewers for either on-premises or off-
3 premises consumption to consumers on the brewery premises, or on
4 premises located contiguous thereto;

5 7. To sell the charitable collaboration beer produced by the
6 collaborating licensed brewers at public events such as trade shows
7 or festivals; and

8 8. To purchase the charitable collaboration beer produced by
9 the collaborating licensed brewers in retail containers from the
10 holder of a beer distributor license to sell or serve in accordance
11 with this section.

12 B. Nothing in this section shall prohibit the holder of a
13 charitable collaboration brewer license from also holding or owning
14 an interest in the holder of a brewpub license.

15 C. For purposes of this section, no visitor may sample more
16 than a total of twelve (12) fluid ounces of the charitable
17 collaboration beer per day. The brewer must restrict the
18 distribution and consumption of charitable collaboration beer
19 samples to an area within the licensed premises designated by the
20 brewer. A current floor plan that includes the designated sampling
21 area must be on file with the ABLE Commission. No visitor under
22 twenty-one (21) years of age shall be permitted to enter this
23 designated sampling area when samples are being distributed or
24 consumed. Samples of the charitable collaboration beer served by a

1 collaborating brewery under this section shall not be considered a
2 sale of beer within the meaning of Article XXVIII A of the Oklahoma
3 Constitution or Section 1-103 of Title 37A of the Oklahoma Statutes;
4 however, such samples of the charitable collaboration beer shall be
5 considered beer removed or withdrawn from the brewery for use or
6 consumption within the meaning of Section 5-110 of Title 37A of the
7 Oklahoma Statutes for excise tax determination and reporting
8 requirements. Sales and sampling may only occur between the hours
9 of 10:00 a.m. and 2:00 a.m.

10 D. If a small brewer is a licensed charitable collaborating
11 brewer and such small brewer holds a self-distribution license, it
12 shall authorize the holder thereof to distribute the charitable
13 collaboration beer produced to a holder of a retail beer license,
14 retail spirits license, mixed beverage license, beer and wine
15 license, caterer's license, special event license, public event
16 license, charitable auction license or brewpub license. If a small
17 brewer has elected to distribute through a distributor or self-
18 distribute in a subject territory, for purposes of the charitable
19 collaboration brewer license such small brewer and the other
20 collaborating brewer may elect to do both simultaneously in a
21 subject territory upon notice to the ABLE Commission.

22 E. No more than two licensed brewers in this state shall
23 collaborate to formulate, develop, manufacture, store, distribute
24 and sell a single charitable collaboration beer offering. The

1 licensed collaborating brewers shall be required to donate all
2 profits made from their charitable collaboration beer sales to the
3 specified charity for its designated purpose.

4 F. The ABLE Commission shall promulgate rules, forms and fees
5 to implement and enforce the charitable collaboration brewer
6 license.

7 G. When two Oklahoma licensed brewers make application to the
8 ABLE Commission to develop a charitable collaboration beer offering
9 and seek to obtain a charitable collaboration brewer license. The
10 ABLE Commission shall evaluate the application based upon the
11 following:

12 1. Whether the collaboration has a legitimate charitable
13 purpose in this state, another state or a national charitable
14 effort;

15 2. Whether the formula needs approval by any federal regulatory
16 authority;

17 3. Whether the Tax Commission has been notified of the request
18 for a tax exemption to allow the collaborators to transfer-in-bond
19 products between the licensed premises of the collaborating brewers
20 and whether the Tax Commission approves such transfer-in-bond;

21 4. The license standing of each licensed collaborating brewer
22 in this state, including, but not limited to, any required storage
23 licenses.

1 Upon consideration of the application facts and detailed plans
2 submitted by the collaborating brewers, the ABLE Commission shall
3 make its determination whether or not to issue the charitable
4 collaboration brewer license. Upon approval of a charitable
5 collaboration brewer license, such license shall be issued to both
6 licensed brewers for the development and manufacture of a charitable
7 collaboration beer offering. Each licensed brewer shall be required
8 to post the charitable collaboration brewer license at their
9 licensed premises and such license number shall be clearly affixed
10 to any alcohol products stored or transferred-in-bond between the
11 collaborating breweries. The charitable collaboration beer offering
12 shall require a private label approved by the ABLE Commission
13 according to the label requirements promulgated by the ABLE
14 Commission rules.

15 SECTION 8. This act shall become effective November 1, 2019.

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1 Passed the Senate the 13th day of March, 2019.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2019.

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8 _____
9 Presiding Officer of the House
10 of Representatives