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February 27, 2019

AS AMENDED

SENATE BILL NO. 936

By: Bice

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[ beer breweries - brand label requirements -
charitable collaboration beer - taxation -
codification - 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 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 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. 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 4. This act shall become effective November 1, 2019.

16 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
17 February 27, 2019 - DO PASS AS AMENDED
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