

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO. 936

By: Bice

AS INTRODUCED

An Act relating to beer breweries; amending 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), which relates to brand label requirements; providing exception for private label on charitable collaboration beer; allowing the transfer of certain products without taxation between certain licensed brewers; providing for tax abatement until certain time; requiring certain labeling; authorizing certain inspections and audits for compliance; directing the Tax Commission to promulgate certain rules and forms for certain tax exemption; defining term; creating a charitable collaboration brewer license; stating license authority; construing holder of brewpub license; allowing samples to be served; allowing both beer distributor and self-distribution of charitable collaboration beer; requiring notice to ABLE Commission; limiting number of collaborating brewers; mandating all profits be distributed to charity; directing the ABLE Commission to promulgate rules; requiring evaluation of charitable collaboration application; stating considerations for licensure; directing license be issued to each collaborator; requiring posting of license on premises and alcohol products stored or transferred; providing for codification; and providing an effective date.

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

1 SECTION 1. AMENDATORY Section 135, Chapter 366, O.S.L.
2 2016, as amended by Section 23, Chapter 364, O.S.L. 2017 (37A O.S.
3 Supp. 2018, Section 5-132), is amended to read as follows:

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

11 B. An application for registration of a brand label shall be
12 filed by and fees paid by the manufacturer or brewer of the brand if
13 the manufacturer or brewer is licensed by the ABLE Commission;
14 however, if the manufacturer is represented by a manufacturer's
15 agent, licensed nonresident seller, wine and spirits wholesaler or
16 beer distributor, then the manufacturer's agent, nonresident seller,
17 wine and spirits wholesaler or beer distributor shall submit each
18 label for each product the manufacturer offers for sale in this
19 state, along with payment of the brand registration fee; provided,
20 the manufacturer or brewer must fully reimburse the manufacturer's
21 agent, licensed nonresident seller, wine and spirits wholesaler or
22 beer distributor for the cost of the brand registration fee within
23 forty-five (45) days of the time the original brand registration fee
24 is paid. Cordials and wines which differ only as to age or vintage

1 year, as defined by such rules, shall be considered the same brand,
2 and those that differ as to type or class may be considered the same
3 brand by the ABLE Commission where consistent with the purposes of
4 this section.

5 C. The application for registration of a brand label shall be
6 filed on a form prescribed by the ABLE Commission, and shall contain
7 such information as the ABLE Commission shall require. Such
8 application shall be accompanied by a certified check, bank
9 officers' check or draft or money order in the amount of the annual
10 registration fee, or the properly prorated portion thereof
11 prescribed by this section.

12 D. 1. The annual fee for registration of any brand label for
13 spirits shall be Three Hundred Seventy-five Dollars (\$375.00). The
14 annual fee for registration of any brand label for beer shall be Two
15 Hundred Dollars (\$200.00). The annual fee for registration of any
16 brand label for wine made in the United States, or for registration
17 of any category of imported wine as defined by the Tax Commission,
18 shall be Two Hundred Dollars (\$200.00). Beer manufactured in this
19 state shall be exempt from brand label registration fees.

20 2. Each brand label registered and approved pursuant to this
21 section shall be valid for a term of up to one (1) year, expiring on
22 the June 30 next following registration, and may be renewed for
23 subsequent terms of one (1) year beginning on the July 1 following
24 the initial registration. Brand registration fees for labels

1 registered after July 1 may be prorated through the following June
2 30 on a quarterly basis. The brand registration fee shall not be
3 transferable.

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

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

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

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

18 For purposes of an approved charitable collaboration beer as
19 authorized in Section 3 of this act, the production of wort and non-
20 retail packaged alcohol products necessary for the development,
21 mixing, fermentation, brewing, storage or retail packaging, in whole
22 or any part thereof, shall be allowed to be transferred-in-bond
23 without taxation between charitable collaborating breweries licensed
24 in this state; provided, all such transfers are made in accordance

1 with applicable federal law and regulations, and, provided further,
2 all such products containing alcohol shall bear the specific license
3 number for the approved charitable collaboration brewery. The Tax
4 Commission shall abate taxes upon notice and application and only
5 until the charitable collaboration beer is packaged for purposes of
6 distribution as may be divided, in whole or any part thereof,
7 between the licensed collaborating breweries.

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

11 The Tax Commission and the ABLE Commission may conduct such
12 inspections and audits necessary to maintain strict compliance and
13 record keeping during the development, mixing, fermentation,
14 brewing, storage or retail packaging, in whole or any part thereof,
15 of an approved charitable collaboration beer. The Tax Commission
16 shall promulgate rules and forms to exempt and allow transfer-in-
17 bond in accordance with the provisions of this act and ABLE
18 Commission rules.

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

22 Charitable Collaboration Brewer License.

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

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

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

6 3. To sell the charitable collaboration beer out of this state
7 to qualified persons for the sole purpose of fundraising for the
8 stated charitable purposes;

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

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

15 6. To sell the charitable collaboration beer produced by the
16 collaborating licensee brewers for either on-premises or off-
17 premises consumption to consumers on the brewery premises, or on
18 premises located contiguous thereto;

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

22 8. To purchase the charitable collaboration beer produced by
23 the collaborating licensed brewers in retail containers from the
24

1 holder of a beer distributor license to sell or serve in accordance
2 with this section.

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

6 C. For purposes of this section, no visitor may sample more
7 than a total of twelve (12) fluid ounces of the charitable
8 collaboration beer per day. The brewer must restrict the
9 distribution and consumption of charitable collaboration beer
10 samples to an area within the licensed premises designated by the
11 brewer. A current floor plan that includes the designated sampling
12 area must be on file with the ABLE Commission. No visitor under
13 twenty-one (21) years of age shall be permitted to enter this
14 designated sampling area when samples are being distributed or
15 consumed. Samples of the charitable collaboration beer served by a
16 collaborating brewery under this section shall not be considered a
17 sale of beer within the meaning of Article XXVIII A of the Oklahoma
18 Constitution or Section 1-103 of Title 37A of the Oklahoma Statutes;
19 however, such samples of the charitable collaboration beer shall be
20 considered beer removed or withdrawn from the brewery for use or
21 consumption within the meaning of Section 5-110 of Title 37A of the
22 Oklahoma Statutes for excise tax determination and reporting
23 requirements. Sales and sampling may only occur between the hours
24 of 10:00 a.m. and 2:00 a.m.

1 D. If a small brewer is a licensed charitable collaborating
2 brewer and such small brewer holds a self-distribution license, it
3 shall authorize the holder thereof to distribute the charitable
4 collaboration beer produced to a holder of a retail beer license,
5 retail spirits license, mixed beverage license, beer and wine
6 license, caterer's license, special event license, public event
7 license, charitable auction license or brewpub license. If a small
8 brewer has elected to distribute through a distributor or self-
9 distribute in a subject territory, for purposes of the charitable
10 collaboration brewer license such small brewer and the other
11 collaborating brewer may elect to do both simultaneously in a
12 subject territory upon notice to the ABLE Commission.

13 E. No more than two licensed brewers in this state shall
14 collaborate to formulate, develop, manufacture, store, distribute
15 and sell a single charitable collaboration beer offering. The
16 licensed collaborating brewers shall be required to donate all
17 profits made from their charitable collaboration beer sales to the
18 specified charity for its designated purpose.

19 F. The ABLE Commission shall promulgate rules, forms and fees
20 to implement and enforce the charitable collaboration brewer
21 license.

22 G. When two Oklahoma licensed brewers make application to the
23 ABLE Commission to develop a charitable collaboration beer offering
24 and seek to obtain a charitable collaboration brewer license. The

1 ABLE Commission shall evaluate the application based upon the
2 following:

3 1. Whether the collaboration has a legitimate charitable
4 purpose in this state, another state or a national charitable
5 effort;

6 2. Whether the formula needs approval by any federal regulatory
7 authority;

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

12 4. The license standing of each licensed collaborating brewer
13 in this state, including, but not limited to, any required storage
14 licenses.

15 Upon consideration of the application facts and detailed plans
16 submitted by the collaborating brewers, the ABLE Commission shall
17 make its determination whether or not to issue the charitable
18 collaboration brewer license. Upon approval of a charitable
19 collaboration brewer license, such license shall be issued to both
20 licensed brewers for the development and manufacture of a charitable
21 collaboration beer offering. Each licensed brewer shall be required
22 to post the charitable collaboration brewer license at their
23 licensed premises and such license number shall be clearly affixed
24 to any alcohol products stored or transferred-in-bond between the

1 collaborating breweries. The charitable collaboration beer offering
2 shall require a private label approved by the ABLE Commission
3 according to the label requirements promulgated by the ABLE
4 Commission rules.

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

6
7 57-1-912 NP 2/6/2019 9:34:18 AM

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24