1	ENGROSSED HOUSE AMENDMENT
2	TO ENGROSSED SENATE BILL NO. 757 By: Pugh of the Senate
3	and
4	McEntire of the House
5	
6	
7	[violations and delivery of alcoholic beverage
8	<pre>products - small brewer and small farm winery delivery - licensee - third-party vendor - codification]</pre>
9	codification
10	
11	AMENDMENT NO. 1. Strike the stricken title, enacting clause, and entire bill and insert:
12	entile bill and insert:
13	"[alcoholic beverages - removing the authorization
14	of the Oklahoma Tax Commission for auditing any
15	mixed beverage, beer and wine, caterer, public
16	event or special event licensee - effective date]
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19	BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:
20	SECTION 1. AMENDATORY 37A O.S. 2021, Section 5-135, is
21	amended to read as follows:
22	Section 5-135. A. Every mixed beverage tax permit holder, or
23	any person transacting business subject to the gross receipts tax
24	levied by Section $\frac{108}{108}$ $\frac{5-105}{100}$ of this $\frac{100}{100}$ shall file with the

- 1 Oklahoma Tax Commission a monthly report for each place or location of business, on or before the twentieth day of the month immediately following the month of receipt. The reports shall be made under 3 oath, on forms prescribed by the Tax Commission, which shall include
- 5 the following information:
 - Name of mixed beverage tax permit holder;
 - 2. Mixed beverage tax permit number;
 - 3. Sales tax permit number;

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- 4. Mixed beverage, caterer, public event or special event license number; 10
- 5. Gross receipts for the month for the sale, preparation or 11 service of mixed beverages, ice and nonalcoholic beverages mixed 12 1.3 with alcoholic beverages;
 - 6. Gross receipts for the month from charges for the privilege of admission to a mixed beverage establishment which entitles a person to complimentary mixed beverages or discounted prices for mixed beverages;
 - 7. Total retail value of complimentary or discounted alcoholic beverages served for the month; and
 - Such other information as may be required by the Tax Commission to enable it to collect taxes imposed as provided by law.
- 22 The gross receipts tax levied by Section 108 5-105 of this 23 act title shall be calculated by multiplying the tax rate, thirteen 24 and one-half percent (13.5%), and the total gross receipts for each

month from the sale, preparation or service of mixed beverages, ice and nonalcoholic beverages mixed with alcoholic beverages, the total gross receipts of charges received for admission to mixed beverage establishments, as provided in paragraph 6 of subsection A of this section, and the total retail value of complimentary or discounted mixed beverages. Gross receipts from the sale of food prepared with alcoholic beverages shall not be included in the calculation of the monthly tax liability. The tax due for the preceding month shall accompany the report required in subsection A of this section. All taxes, penalties and interest imposed by the Oklahoma Alcoholic Beverage Control Act may be paid in the form of electronic funds transfer or by a personal or company check, cashier's check, certified check or postal money order payable to the Tax Commission.

- C. If the gross receipts tax levied pursuant to the provisions of Section 108 5-105 of this act title is not paid on or before the twentieth day of each month, the tax shall be delinquent, and interest and penalty shall accrue on and from the twenty-first day of each month, pursuant to the provisions of the Uniform Tax Procedure Code.
- D. Every licensed wholesaler of alcoholic beverages in this state shall file with the Tax Commission a monthly report, under oath, on forms prescribed by the Tax Commission, which shall include the name, location and mixed beverage tax permit number of each mixed beverage, caterer, public event or special event licensee to

whom the licensed wholesaler sold alcoholic beverages during the report month.

- E. If the report required by subsection A of this section is not filed with the Tax Commission on or before the twentieth day of the month, the Tax Commission may assess an additional penalty of Five Dollars (\$5.00) for each day thereafter that the report is not filed pursuant to the provisions of this section. The Tax Commission may waive the penalty assessed pursuant to the provisions of the Uniform Tax Procedure Code; provided, however, the additional penalty, if assessed, shall not exceed an amount equal to twice the amount of tax due for the period for which such report was required to be filed, or the sum of Three Hundred Dollars (\$300.00), whichever is greater.
 - F. Taxes paid as provided by law represented by accounts receivable which are found to be worthless or uncollectible may be credited upon subsequent reports and remittances of such tax, in accordance with rules promulgated by the Tax Commission. If such accounts are thereafter collected, the same shall be reported and the tax shall be paid upon the amount so collected.
- G. In addition to any other authority granted by law, the Tax
 Commission is hereby authorized to audit any mixed beverage, beer
 and wine, caterer, public event or special event licensee to
 determine if the correct amount of tax payable under Section 108 5105 of this act title has been collected; provided, if such an audit

1	reveals that the amount collected is within the following
2	percentages of the amount of tax payable, the taxpayer shall be
3	deemed to be in compliance:
4	1. For spirits, eighty-four percent (84%) to one hundred
5	sixteen percent (116%);
6	2. For wine, ninety percent (90%) to one hundred ten percent
7	(110%);
8	3. For beer sold at draft and not in original packages, eighty-
9	six percent (86%) to one hundred fourteen percent (114%); and
10	4. For beer sold in original packages, ninety-five percent
11	(95%) to one hundred five percent (105%).
12	SECTION 2. This act shall become effective November 1, 2022."
13	Passed the House of Representatives the 27th day of April, 2022.
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16	Presiding Officer of the House of Representatives
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18	Passed the Senate the day of, 2022.
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21	Presiding Officer of the Senate
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ENGROSSED SENATE BILL NO. 757

By: Pugh of the Senate

and

McEntire of the House

[violations and delivery of alcoholic beverage
products - small brewer and small farm winery
delivery - licensee - third-party vendor codification]

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

SECTION 3. AMENDATORY Section 45, Chapter 366, O.S.L. 2016, as amended by Section 2, Chapter 155, O.S.L. 2020 (37A O.S. Supp. 2020, Section 2-133), is amended to read as follows:

Section 2-133. Each licensee authorized to deliver alcoholic beverage products to consumers in Section ± 2-161 of this act title and each bottle club or mixed beverage, beer and wine, caterer, public event, charitable event or special event licensee shall be held responsible for violation of any alcoholic beverage law or administrative rule of the ABLE Commission affecting his or her license privileges and for any act or omission of his or her servant, agent, employee or representative in violation of any law, municipal ordinance or administrative rule affecting his or her license privileges. A third-party vendor as defined in Section 2-

(Floor Amendments Only)	Date and Time Filed:	
Untimely	Amendment Cycle Extended	Secondary Amendment

- 1 | 161 of Title 37A of the Oklahoma Statutes who is authorized by law
- 2 and by contractual agreement with a retail licensee to deliver
- 3 | alcoholic beverage products to a consumer shall be held responsible
- 4 | for violation of alcoholic beverage laws or administrative rules of
- 5 | the ABLE Commission affecting his or her license privilege to
- 6 deliver alcoholic beverage products to consumers.
- 7 SECTION 4. AMENDATORY Section 1, Chapter 155, O.S.L.
- 8 | 2020 (37A O.S. Supp. 2020, Section 2-161), is amended to read as
- 9 follows:
- 10 Section 2-161. A. Retail spirit licensees may sell curbside
- 11 and deliver alcoholic beverages including beer, wine, and spirits in
- 12 | sealed original containers to consumers aged twenty-one (21) years
- 13 | and older as follows:
- 14 1. Only employees Employees of the retail spirit licensee shall
- 15 be permitted to make alcoholic beverage product deliveries to
- 16 | consumers;
- 2. Payment for alcoholic beverage product delivery by the
- 18 retail spirit licensee may be made by cash, check, transportable
- 19 | credit/debit card processors or advance on-line payment methods; and
- 3. The retail spirit licensee shall be responsible for his or
- 21 her delivery employees as provided in Section 2-133 of Title 37A of
- 22 the Oklahoma Statutes this title. A retail spirit licensee shall be
- 23 prohibited from utilizing third-party vendors or delivery services

- for the purpose of completing alcoholic beverage product deliveries to consumers.
 - B. Small brewers and small farm wineries licensed by the Oklahoma ABLE Commission may sell curbside <u>and deliver</u> only alcoholic beverages produced by such licensee in sealed original containers to consumers aged twenty-one (21) years and older as follows:
 - 1. Only employees Employees of the licensed small brewer or small farm winery or a third-party vendor shall be permitted to make alcoholic beverage product deliveries to consumers;
 - 2. Payment for alcoholic beverage product delivery by licensed small brewers or small farm wineries may be made by cash, check, transportable credit/debit card processors, or advance on-line payment methods; and
 - 3. Small brewers and small farm wineries shall be responsible for their delivery employees as provided in Section 2-133 of Title

 37A of the Oklahoma Statutes this title. A third-party vendor shall be responsible for delivery of alcoholic beverage products as provided in this act and by rule.
- C. Restaurants, bars and clubs holding mixed beverage, beer and wine, or caterer/mixed beverage licenses issued by the Oklahoma ABLE Commission may sell curbside and deliver only closed packages of beer and wine to consumers aged twenty-one (21) years and older as follows:

- 1. Only employees Employees of such restaurant, bar or club licensee or a third-party vendor shall be permitted to make alcoholic beverage package deliveries to consumers;
- 2. Payment for alcoholic beverage package delivery by licensed restaurants, bars and clubs may be made by cash, check, transportable credit/debit card processors, or advance on-line payment methods; and
- 3. Restaurants, bars and clubs licensed by the Oklahoma ABLE Commission shall be responsible for their delivery employees as provided in Section 2-133 of Title 37A of the Oklahoma Statutes this title. A third-party vendor shall be responsible for delivery of alcoholic beverage products as provided in this act and by rule.
- D. Grocery and convenience stores holding a retail beer and/or retail wine license issued by the Oklahoma ABLE Commission may sell curbside and deliver original sealed containers of beer and/or wine only according to the license held to consumers aged twenty-one (21) years and older as follows:
- 1. Only employees Employees of such licensed grocery or convenience store or a third-party vendor shall be permitted to make alcoholic beverage product deliveries to consumers;
- 2. Payment for alcoholic beverage product delivery by a licensed grocery or convenience store may be made by cash, check, transportable credit/debit card processors or advance on-line payment methods; and

- 3. Grocery and convenience store licensees shall be responsible for their delivery employees as provided in Section 2-133 of Title

 37A of the Oklahoma Statutes this title. A third-party vendor shall be responsible for delivery of alcoholic beverage products as provided in this act and by rule.
- E. Licensees authorized by this section to make alcoholic beverage product deliveries to consumers are prohibited from by utilizing third-party vendors or delivery services for purposes of completing such product deliveries to consumers shall be required to have a written contractual agreement with the third-party vendor business prior to delivery of any alcoholic beverage products.
- F. Licensees authorized by this section to make alcoholic beverage product deliveries to consumers by employees or third-party vendors shall comply with the laws, rules, procedures and executive orders incumbent on such licensee.
- G. The Oklahoma ABLE Commission is authorized to promulgate rules, regulations, forms and procedures necessary to implement and enforce the provisions of this section.
- H. For purposes of this section each delivery authorized by a licensee to be made by his or her employee to a consumer shall be deemed a direct hand-to-hand sale as though the consumer was physically present on the licensed premises and authorized by law by such licensee.
 - I. 1. For purposes of this section:

- entity that is not an employee of the licensee and

 such term includes an independent contractor and

 technology services company contracted by the licensee

 whose primary business is food delivery or passenger

 transport and specifically excludes a vendor whose

 business is the shipment of goods, and
- b. "technology services company" means a company that

 provides software or an application for connecting

 customers, retailers and/or restaurants to a delivery

 driver that is employed by or contracted with the

 technology service company and excludes a company

 whose business is the shipment of goods.
- 2. A third-party vendor business and each third-party vendor delivery driver shall be required to be licensed by the ABLE Commission as provided in Section 4 of this title. The third-party vendor business shall additionally pay an annual surcharge to the ABLE Commission as provided in paragraph G of Section 2-101 of this title.
- 3. A third-party vendor delivery driver shall be twenty-one

 (21) years of age or older and such person shall not have been

 convicted of any criminal offense relating to alcoholic beverages.

 The third-party vendor business shall have completed a criminal

- history records check on each delivery driver who delivers alcoholic
 beverages for a licensee as authorized under this section.
 - 4. A third-party vendor contracted by the licensee shall only be authorized to deliver alcoholic beverages and such food or items allowed to be sold by the licensee with the point of sale being at the licensee's retail location.
 - 5. A third-party vendor shall be authorized to charge the consumer a delivery fee but shall not charge, add on or collect any portion of the amount of the retail sales price for the alcoholic beverages. All sales of alcoholic beverages shall be the responsibility of the licensee and the sales price for the delivery of alcoholic beverages shall not exceed the retail price at the store from which the alcoholic beverages were purchased.
 - 6. A third-party vendor delivery driver shall be required to confirm the purchaser receiving the alcoholic beverages is twenty-one (21) years of age or older before completing a delivery of alcoholic beverages. No package containing alcoholic beverages may be delivered to or left unattended at a residence or business address except for the delivery of such package in person to the purchaser confirmed to be twenty-one (21) years of age or older. Undeliverable alcoholic beverage products shall be returned to the retail licensee's licensed premise on the same calendar day that the purchase occurred.

1	7. While transporting alcoholic beverage products for a retail
2	licensee, a third-party vendor delivery driver shall be required to
3	have in his or her possession a valid license and the receipt for
4	alcoholic beverage products showing the product has been paid in
5	advance to the licensee.
6	SECTION 5. AMENDATORY Section 13, Chapter 366, O.S.L.
7	2016, as last amended by Section 9, Chapter 161, O.S.L. 2020 (37A
8	O.S. Supp. 2020, Section 2-101), is amended to read as follows:
9	Section 2-101. A. Except as otherwise provided in this
10	section, the licenses issued by the ABLE Commission, and the annual
11	fees therefor, shall be as follows:
12	1. Brewer License\$1,250.00
13	2. Small Brewer License\$125.00
14	3. Distiller License\$3,125.00
15	4. Winemaker License\$625.00
16	5. Small Farm Winery License\$75.00
17	6. Rectifier License\$3,125.00
18	7. Wine and Spirits Wholesaler License\$3,000.00
19	8. Beer Distributor License\$750.00
20	9. The following retail spirits license fees
21	shall be determined by the latest Federal
22	Decennial Census:
23	a. Retail Spirits License for cities and
24	towns from 200 to 2,500 population\$305.00

1		b. Retail Spirits License for cities and
2		towns from 2,501 to 5,000 population \$605.00
3		c. Retail Spirits License for cities and
4		towns over 5,000 population\$905.00
5	10.	Retail Wine License\$1,000.00
6	11.	Retail Beer License\$500.00
7	12.	Mixed Beverage License\$1,005.00
8		(initial license)
9		\$905.00
10		(renewal)
11	13.	Mixed Beverage/Caterer Combination License \$1,250.00
12	14.	On-Premises Beer and Wine License\$500.00
13		(initial license)
14		\$450.00
15		(renewal)
16	15.	Bottle Club License\$1,000.00
17		(initial license)
18		\$900.00
19		(renewal)
20	16.	Caterer License\$1,005.00
21		(initial license)
22		\$905.00
23		(renewal)
24	17.	Annual Special Event License\$55.00

1	18.	Quarterly Special Event License\$55.00
2	19.	Hotel Beverage License\$1,005.00
3		(initial license)
4		\$905.00
5		(renewal)
6	20.	Airline/Railroad/Commercial Passenger Vessel Beverage
7	License.	\$1,005.00
8		(initial license)
9		\$905.00
10		(renewal)
11	21.	Agent License\$55.00
12	22.	Employee License\$30.00
13	23.	Industrial License\$23.00
14	24.	Carrier License\$23.00
15	25.	Private Carrier License\$23.00
16	26.	Bonded Warehouse License\$190.00
17	27.	Storage License\$23.00
18	28.	Nonresident Seller License or Manufacturer's
19		License\$750.00
20	29.	Manufacturer's Agent License\$55.00
21	30.	Sacramental Wine Supplier License\$100.00
22	31.	Charitable Auction License\$1.00
23	32.	Charitable Alcoholic Beverage License\$55.00
24	33.	Winemaker Self-Distribution License \$750.00

1	34.	Annual Public Event License\$1,005.00
2	35.	One-Time Public Event License\$255.00
3	36.	Small Brewer Self-Distribution License \$750.00
4	37.	Brewpub License\$1,005.00
5	38.	Brewpub Self-Distribution License \$750.00
6	39.	Complimentary Beverage License\$75.00
7	40.	Satellite Tasting Room License\$100.00
8	41.	Third-Party Vendor Business License\$500.00
9	42.	Third-Party Vendor Delivery Driver License \$30.00
10	В.	1. There shall be added to the initial or renewal fees for
11	a Mixed	Beverage License an administrative fee, which shall not be
12	deemed t	o be a license fee, in the amount of Five Hundred Dollars
13	(\$500.00), which shall be paid at the same time and in the same
14	manner a	s the license fees prescribed by paragraph 12 of subsection
15	A of thi	s section; provided, this fee shall not be assessed against
16	service	organizations or fraternal beneficiary societies which are
17	exempt u	nder Section 501(c)(19), (8) or (10) of the Internal Revenue
18	Code.	
19	2.	There shall be added to the fee for a Mixed Beverage/Caterer

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

- 1 C. Notwithstanding the provisions of subsection A of this 2 section:
 - 1. The license fee for a mixed beverage or bottle club license for those service organizations or fraternal beneficiary societies which are exempt under Section 501(c)(19), (8) or (10) of the Internal Revenue Code shall be Five Hundred Dollars (\$500.00) per year; and
 - 2. The renewal fee for an airline/railroad/commercial passenger vessel beverage license held by a railroad described in 49 U.S.C., Section 24301, shall be One Hundred Dollars (\$100.00); and
 - 3. The annual fee for a third-party vendor business license and the annual fee for a third-party vendor delivery driver shall be collected by the ABLE Commission for deposit and credit to the General Revenue Fund of this state.
 - D. An applicant may apply for and receive both an on-premises beer and wine license and a caterer license.
 - E. All licenses, except as otherwise provided, shall be valid for one (1) year from date of issuance unless revoked or surrendered. Provided, all employee licenses shall be valid for two (2) years.
- F. The holder of a license, issued by the ABLE Commission, for a bottle club located in a county of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized, may exchange the bottle club

1	license for a mixed beverage license or an on-premises beer and wine
2	license and operate the licensed premises as a mixed beverage
3	establishment or an on-premises beer and wine establishment subject
4	to the provisions of the Oklahoma Alcoholic Beverage Control Act.
5	There shall be no additional fee for such exchange and the mixed
6	beverage license or on-premises beer and wine license issued shall
7	expire one (1) year from the date of issuance of the original bottle
8	club license.
9	G. In addition to the applicable licensing fee, the following
10	surcharge shall be assessed annually on the following licenses:
11	1. Nonresident Seller or Manufacturer License \$2,500.00
12	2. Wine and Spirits Wholesaler License\$2,500.00
13	3. Beer Distributor\$1,000.00
14	4. Retail Spirits License for cities and towns
15	over 5,000 population\$250.00
16	5. Retail Spirits License for cities and towns
17	from 2,501 to 5,000 population\$200.00
18	6. Retail Spirits License for cities and towns
19	from 200 to 2,500 population\$150.00
20	7. Retail Wine License\$250.00
21	8. Retail Beer License\$250.00
22	9. Mixed Beverage License\$25.00
23	10. Mixed Beverage/Caterer Combination License \$25.00
24	11. Caterer License\$25.00

Τ	12.	On-Premises Beer and Wine License\$25.00
2	13.	Annual Public Event License\$25.00

- 14. Small Farm Winery License.....\$25.00
- 4 15. Small Brewer License......\$35.00
- 5 | 16. Complimentary Beverage License......\$25.00
- 6 17. Third-Party Vendor Business License......\$250.00
 - The surcharge shall be paid concurrent with the licensee's annual licensing fee and, in addition to Five Dollars (\$5.00) of the employee license fee, shall be deposited in the Alcoholic Beverage Governance Revolving Fund established pursuant to Section 5-128 of this title.
 - H. Any license issued by the ABLE Commission under this title may be relied upon by other licensees as a valid license, and no other licensee shall have any obligation to independently determine the validity of such license or be held liable solely as a consequence of another licensee's failure to maintain a valid license.
 - SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-162 of Title 37A, unless there is created a duplication in numbering, reads as follows:
 - A. The ABLE Commission shall issue licenses for third-party vendor businesses and third-party vendor delivery drivers upon the effective date of this act. The ABLE Commission shall promulgate rules and forms for issuing licenses and procedures to enforce the

- provisions for delivery of alcoholic beverage products by thirdparty vendor businesses and third-party vendor delivery drivers.
- B. 1. A third-party vendor business license shall authorize the holder thereof to:
 - a. engage in the business of alcoholic beverage delivery to consumers by contractual agreement with retail licensees authorized for deliveries as provided by Section 2-161 of Title 37A of the Oklahoma Statutes, and
 - b. contract with a third-party vendor delivery driver licensee to perform the delivery of alcoholic beverages from the retail licensee.
- 2. A third-party vendor delivery driver license shall authorize the holder thereof to perform alcoholic beverage deliveries to consumers by contractual agreement with one or more third-party vendor business licensees.
- C. 1. A license issued by the ABLE Commission to a third-party vendor delivery driver shall be displayed conspicuously in the vehicle or be in the possession of the third-party delivery driver while providing delivery services for a retail licensee.
- 2. No licensee shall consent or allow the use or display of the license by a person other than the person to whom the license was issued.

1	3. No person shall use a license or exercise any privileges
2	granted by the license except as provided by the Oklahoma Alcoholic
3	Beverage Control Act.
4	D. 1. If a license issued to a third-party vendor business is
5	suspended or revoked by the ABLE Commission, all other third-party
6	vendor delivery driver licenses affiliated with the third-party
7	vendor's business shall cease to be valid.
8	2. If a license of a third-party vendor delivery driver is
9	suspended or revoked, this shall not invalidate licenses held by the
10	third-party vendor business or other affiliated third-party vendor
11	delivery driver licenses.
12	Passed the Senate the 11th day of March, 2021.
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14	Presiding Officer of the Senate
15	riesiding Officer of the Senate
16	Passed the House of Representatives the day of,
17	2021.
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19	Presiding Officer of the House
20	of Representatives
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