

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

COMMITTEE SUBSTITUTE  
FOR

HOUSE BILL NO. 3859

By: Strom

COMMITTEE SUBSTITUTE

An Act relating to alcoholic beverages; amending 37A O.S. 2021, Section 6-102, which relates to licensee prohibited acts under the Oklahoma Alcoholic Beverage Control Act; providing that mixed beverage licensees may sale to-go drinks at a different price than on-premises drinks; and providing an effective date.

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

SECTION 1. AMENDATORY 37A O.S. 2021, Section 6-102, is amended to read as follows:

Section 6-102. A. No licensee of the ABLE Commission shall:

1. Receive, possess or sell any alcoholic beverage except as authorized by the Oklahoma Alcoholic Beverage Control Act and by the license or permit which the licensee holds;

2. Employ any person under eighteen (18) years of age in the selling of beer or wine or employ any person under twenty-one (21) years of age in the selling of spirits. Provided:

- 1           a.    a mixed beverage, beer and wine, caterer, public  
2                   event, special event, bottle club, retail wine or  
3                   retail beer licensee may employ servers or sales  
4                   clerks who are at least eighteen (18) years of age,  
5                   except persons under twenty-one (21) years of age may  
6                   not serve in designated bar or lounge areas, and  
7           b.    a mixed beverage, beer and wine, caterer, public  
8                   event, special event or bottle club licensee may  
9                   employ or hire musical bands who have musicians who  
10                  are under eighteen (18) years of age if each such  
11                  musician is either accompanied by a parent or legal  
12                  guardian or has on their person, to be made available  
13                  for inspection upon demand by any employee of the ABLE  
14                  Commission or law enforcement officer, a written,  
15                  notarized affidavit from the parent or legal guardian  
16                  giving the underage musician permission to perform in  
17                  designated bar or lounge areas;

18           3.    Give any alcoholic beverage as a prize, premium or  
19                  consideration for any lottery, game of chance or skill or any type  
20                  of competition;

21           4.    Use any of the following means or inducements to stimulate  
22                  the consumption of alcoholic beverages, including but not limited  
23                  to:  
24

- 1 a. deliver more than two drinks to one person at one  
2 time, except as provided for serving tasting flights  
3 defined in Section 6-102.1 of this title,
- 4 b. sell or offer to sell to any person or group of  
5 persons any drinks at a price that is less than six  
6 percent (6%) below the markup of the cost to the mixed  
7 beverage licensee; provided, a mixed beverage licensee  
8 shall be permitted to offer these drink specials on  
9 any particular hour of any particular day and shall  
10 not be required to offer these drink specials for an  
11 entire calendar week or from open to close, and shall  
12 not be required to offer such drink specials at all  
13 venues operating under the same mixed beverage  
14 license; provided, a mixed beverage licensee selling  
15 wine, six packs of beer, or cocktails to-go shall be  
16 permitted to offer these to-go drinks at a different  
17 price than on-premises drinks,
- 18 c. sell or offer to sell to any person an unlimited  
19 number of drinks during any set period of time for a  
20 fixed price, except at private functions not open to  
21 the public,
- 22 d. sell or offer to sell drinks to any person or group of  
23 persons on any one day or portion thereof at prices  
24 less than those charged the general public on that

1 day, except at private functions not open to the  
2 public,

3 e. increase the volume of alcoholic beverages contained  
4 in a drink without increasing proportionately the  
5 price regularly charged for such drink during the same  
6 calendar week, or

7 f. encourage or permit, on the licensed premises, any  
8 game or contest which involves drinking or the  
9 awarding of drinks as prizes.

10 Provided, that the provisions of this paragraph shall not  
11 prohibit the advertising or offering of food, entertainment or  
12 bottle service in licensed establishments;

13 5. Permit or allow any patron or person to exit the licensed  
14 premises with an open container of any alcoholic beverage.

15 Provided, this prohibition shall not be applicable to closed  
16 original containers of alcoholic beverages which are carried from  
17 the licensed premises of a bottle club by a patron, closed original  
18 wine containers removed from the premises of restaurants, hotels and  
19 motels, or to closed original containers of alcoholic beverages  
20 transported to and from the place of business of a licensed caterer  
21 by the caterer or an employee of the caterer;

22 6. Serve or sell alcoholic beverages with an expired license  
23 issued by the ABLE Commission;

1       7. Permit any person to be drunk or intoxicated on the  
2 licensee's licensed premises; or

3       8. Permit or allow any patron to serve or pour himself or  
4 herself any alcoholic beverage, except a licensee may offer a patron  
5 self-pour service of beer or wine, or both, from automated devices  
6 on licensed premises so long as:

7           a. the licensee monitors and has the ability to control  
8 the dispensing of such beer or wine, or both, from the  
9 automated devices. "Automated device" shall mean any  
10 mechanized device capable of dispensing wine or beer,  
11 or both, directly to a patron in exchange for  
12 compensation that a licensee has received directly  
13 from the patron, and

14           b. each licensee offering a patron self-pour service of  
15 wine or beer, or both, from any automated device shall  
16 provide constant video monitoring of the automated  
17 device at all times during which the licensee is open  
18 to the public. The licensee shall keep recorded  
19 footage from the video monitoring for at least sixty  
20 (60) days, and shall provide the footage, upon  
21 request, to any agent of the Director of the ABLE  
22 Commission or other authorized law enforcement agent.

23       B. 1. The compensation required by subparagraph a of paragraph  
24 8 of subsection A of this section shall be in the form of a radio

1 frequency identification (RFID) device, mobile application or any  
2 other technology approved by the ABLE Commission containing a fixed  
3 amount of volume of thirty-two (32) ounces for beer and ten (10)  
4 ounces for wine that may be directly exchanged for beer or wine  
5 dispensed from the automated device:

- 6 a. RFID devices may be assigned, used or reactivated only  
7 during a business day,
- 8 b. each RFID device shall be obtained from the licensee  
9 by a patron,
- 10 c. a licensee shall not issue more than one active RFID  
11 device to a patron, and
- 12 d. an RFID device shall be deemed active if the RFID  
13 device contains volume credit or has not yet been used  
14 to dispense ten (10) ounces of wine or thirty-two (32)  
15 ounces of beer.

16 2. In order to obtain an RFID device from a licensee, each  
17 patron shall produce a valid driver license, identification card or  
18 other government-issued document that contains a photograph of the  
19 individual and demonstrates that the individual is at least twenty-  
20 one (21) years of age. Each RFID device shall be programmed to  
21 require the production of the patron's valid identification before  
22 the RFID device can be used for the first time during any business  
23 day or for any subsequent reactivation.

1        3. Each RFID device shall become inactive at the end of each  
2 business day.

3        4. Each RFID device shall be programmed to allow the dispensing  
4 of no more than ten (10) ounces of wine or thirty-two (32) ounces of  
5 beer to a patron:

6            a. once an RFID device has been used to dispense ten (10)  
7 ounces of wine or thirty-two (32) ounces of beer to a  
8 patron, the RFID device shall become inactive, and

9            b. any patron in possession of an inactive RFID device  
10 may, upon production of the patron's valid  
11 identification to the licensee or licensee's employee,  
12 have the RFID device reactivated to allow the  
13 dispensing of an additional ten (10) ounces of wine or  
14 thirty-two (32) ounces of beer from an automated  
15 device.

16 Paragraphs 1, 2, 3 and 4 of this subsection shall not apply to wine  
17 or beer that is dispensed directly to the licensee or the licensee's  
18 agent or employee.

19        C. A mixed beverage or beer and wine licensee shall not be  
20 deemed to have violated the provisions of paragraph 5 of subsection  
21 A of this section if it allowed a patron to leave the licensed  
22 premises with an open container of beer or wine only and:

23            1. The otherwise prohibited act was committed during the hours  
24 of 8 a.m. to midnight on the day of a scheduled home football game

1 of institutions within The Oklahoma State System of Higher  
2 Education, and the establishment is located within two thousand  
3 (2,000) feet of the institution;

4 2. The licensee is participating by invitation in a municipally  
5 sanctioned art, music or sporting event within city limits when the  
6 municipality has provided written notice of the event and a list of  
7 invited licensees to the ABLE Commission at least five (5) days  
8 prior to the event; or

9 3. The patron remains on the connected, physical property of  
10 the licensee or in a public area adjacent to the physical property  
11 of the licensee with prior municipal approval; provided that written  
12 notice of the use of the connected, physical property of the  
13 licensee or public area shall be provided to the ABLE Commission at  
14 least five (5) days prior to such use.

15 SECTION 2. This act shall become effective November 1, 2022.

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