

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 757, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Pugh

Pugh-NP-FS-Req#1976
3/9/2021 8:45 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

FLOOR SUBSTITUTE
FOR

SENATE BILL NO. 757

By: Pugh of the Senate

and

McEntire of the House

FLOOR SUBSTITUTE

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

emergency]

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

SECTION 1. 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 ~~4~~ 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,

1 municipal ordinance or administrative rule affecting his or her
2 license privileges. A third party vendor as defined in Section 2-
3 161 of Title 37A of the Oklahoma Statutes who is authorized by law
4 and by contractual agreement with a retail licensee to deliver
5 alcoholic beverage products to a consumer shall be held responsible
6 for violation of alcoholic beverage laws or administrative rules of
7 the ABLE Commission affecting his or her license privilege to
8 deliver alcoholic beverage products to consumers.

9 SECTION 2. AMENDATORY Section 1, Chapter 155, O.S.L.
10 2020 (37A O.S. Supp. 2020, Section 2-161), is amended to read as
11 follows:

12 Section 2-161. A. Retail spirit licensees may sell curbside
13 and deliver alcoholic beverages including beer, wine, and spirits in
14 sealed original containers to consumers aged twenty-one (21) years
15 and older as follows:

16 1. ~~Only employees~~ Employees of the retail spirit licensee shall
17 be permitted to make alcoholic beverage product deliveries to
18 consumers;

19 2. Payment for alcoholic beverage product delivery by the
20 retail spirit licensee may be made by cash, check, transportable
21 credit/debit card processors or advance on-line payment methods; and

22 3. The retail spirit licensee shall be responsible for his or
23 her delivery employees as provided in Section 2-133 of ~~Title 37A of~~
24 ~~the Oklahoma Statutes~~ this title. A retail spirit licensee shall be

1 prohibited from utilizing third-party vendors or delivery services
2 for the purpose of completing alcoholic beverage product deliveries
3 to consumers.

4 B. Small brewers and small farm wineries licensed by the
5 Oklahoma ABLE Commission may sell curbside and deliver only
6 alcoholic beverages produced by such licensee in sealed original
7 containers to consumers aged twenty-one (21) years and older as
8 follows:

9 1. ~~Only employees~~ Employees of the licensed small brewer or
10 small farm winery or a third-party vendor shall be permitted to make
11 alcoholic beverage product deliveries to consumers;

12 2. Payment for alcoholic beverage product delivery by licensed
13 small brewers or small farm wineries may be made by cash, check,
14 transportable credit/debit card processors, or advance on-line
15 payment methods; and

16 3. Small brewers and small farm wineries shall be responsible
17 for their delivery employees as provided in Section 2-133 of ~~Title~~
18 ~~37A of the Oklahoma Statutes~~ this title. A third-party vendor shall
19 be responsible for delivery of alcoholic beverage products as
20 provided in this act and by rule.

21 C. Restaurants, bars and clubs holding mixed beverage, beer and
22 wine, or caterer/mixed beverage licenses issued by the Oklahoma ABLE
23 Commission may sell curbside and deliver only closed packages of
24

1 beer and wine to consumers aged twenty-one (21) years and older as
2 follows:

3 1. ~~Only employees~~ Employees of such restaurant, bar or club
4 licensee or a third-party vendor shall be permitted to make
5 alcoholic beverage package deliveries to consumers;

6 2. Payment for alcoholic beverage package delivery by licensed
7 restaurants, bars and clubs may be made by cash, check,
8 transportable credit/debit card processors, or advance on-line
9 payment methods; and

10 3. Restaurants, bars and clubs licensed by the Oklahoma ABLE
11 Commission shall be responsible for their delivery employees as
12 provided in Section 2-133 of ~~Title 37A of the Oklahoma Statutes~~ this
13 title. A third-party vendor shall be responsible for delivery of
14 alcoholic beverage products as provided in this act and by rule.

15 D. Grocery and convenience stores holding a retail beer and/or
16 retail wine license issued by the Oklahoma ABLE Commission may sell
17 curbside and deliver original sealed containers of beer and/or wine
18 only according to the license held to consumers aged twenty-one (21)
19 years and older as follows:

20 1. ~~Only employees~~ Employees of such licensed grocery or
21 convenience store or a third-party vendor shall be permitted to make
22 alcoholic beverage product deliveries to consumers;

23 2. Payment for alcoholic beverage product delivery by a
24 licensed grocery or convenience store may be made by cash, check,

1 transportable credit/debit card processors or advance on-line
2 payment methods; and

3 3. Grocery and convenience store licensees shall be responsible
4 for their delivery employees as provided in Section 2-133 of ~~Title~~
5 ~~37A of the Oklahoma Statutes~~ this title. A third-party vendor shall
6 be responsible for delivery of alcoholic beverage products as
7 provided in this act and by rule.

8 E. Licensees authorized by this section to make alcoholic
9 beverage product deliveries to consumers ~~are prohibited from by~~
10 utilizing third-party vendors ~~or delivery services~~ for purposes of
11 completing such product deliveries to consumers shall be required to
12 have a written contractual agreement with the third-party vendor
13 business prior to delivery of any alcoholic beverage products.

14 F. Licensees authorized by this section to make alcoholic
15 beverage product deliveries to consumers by employees or third-party
16 vendors shall comply with the laws, rules, procedures and executive
17 orders incumbent on such licensee.

18 G. The Oklahoma ABLE Commission is authorized to promulgate
19 rules, regulations, forms and procedures necessary to implement and
20 enforce the provisions of this section.

21 H. For purposes of this section each delivery authorized by a
22 licensee to be made ~~by his or her employee~~ to a consumer shall be
23 deemed a direct hand-to-hand sale as though the consumer was
24

1 physically present on the licensed premises and authorized by law by
2 such licensee.

3 I. 1. For purposes of this section:

4 a. "third-party vendor" means any person or business
5 entity that is not an employee of the licensee and
6 such term includes an independent contractor and
7 technology services company contracted by the licensee
8 whose primary business is food delivery or passenger
9 transport and specifically excludes a vendor whose
10 business is the shipment of goods, and

11 b. "technology services company" means a company that
12 provides software or an application for connecting
13 customers, retailers and/or restaurants to a delivery
14 driver that is employed by or contracted with the
15 technology service company and excludes a company
16 whose business is the shipment of goods.

17 2. A third-party vendor business and each third-party vendor
18 delivery driver shall be required to be licensed by the ABLE
19 Commission as provided in Section 4 of this title. The third-party
20 vendor business shall additionally pay an annual surcharge to the
21 ABLE Commission as provided in paragraph G of Section 2-101 of this
22 title;

23 3. A third-party vendor delivery driver shall be twenty-one
24 (21) years of age or older and such person shall not have been

1 convicted of any criminal offense relating to alcoholic beverages.

2 The third-party vendor business shall have completed a criminal
3 history records check on each delivery driver who delivers alcoholic
4 beverages for a licensee as authorized under this section.

5 4. A third-party vendor contracted by the licensee shall only
6 be authorized to deliver alcoholic beverages and such food or items
7 allowed to be sold by the licensee with the point of sale being at
8 the licensee's retail location.

9 5. A third-party vendor shall be authorized to charge the
10 consumer a delivery fee but shall not charge, add on or collect any
11 portion of the amount of the retail sales price for the alcoholic
12 beverages. All sales of alcoholic beverages shall be the
13 responsibility of the licensee and the sales price for the delivery
14 of alcoholic beverages shall not exceed the retail price at the
15 store from which the alcoholic beverages were purchased.

16 6. A third-party vendor delivery driver shall be required to
17 confirm the purchaser receiving the alcoholic beverages is twenty-
18 one (21) years of age or older before completing a delivery of
19 alcoholic beverages. No package containing alcoholic beverages may
20 be delivered to or left unattended at a residence or business
21 address except for the delivery of such package in person to the
22 purchaser confirmed to be twenty-one (21) years of age or older.
23 Undeliverable alcoholic beverage products shall be returned to the

1 retail licensee's licensed premise on the same calendar day that the
2 purchase occurred.

3 7. While transporting alcoholic beverage products for a retail
4 licensee, a third-party vendor delivery driver shall be required to
5 have in his or her possession a valid license and the receipt for
6 alcoholic beverage products showing the product has been paid in
7 advance to the licensee.

8 SECTION 3. AMENDATORY Section 13, Chapter 366, O.S.L.
9 2016, as last amended by Section 9, Chapter 161, O.S.L. 2020 (37A
10 O.S. Supp. 2020, Section 2-101), is amended to read as follows:

11 Section 2-101. A. Except as otherwise provided in this
12 section, the licenses issued by the ABLE Commission, and the annual
13 fees therefor, shall be as follows:

- | | | |
|----|--|------------|
| 14 | 1. Brewer License..... | \$1,250.00 |
| 15 | 2. Small Brewer License..... | \$125.00 |
| 16 | 3. Distiller License..... | \$3,125.00 |
| 17 | 4. Winemaker License..... | \$625.00 |
| 18 | 5. Small Farm Winery License..... | \$75.00 |
| 19 | 6. Rectifier License..... | \$3,125.00 |
| 20 | 7. Wine and Spirits Wholesaler License..... | \$3,000.00 |
| 21 | 8. Beer Distributor License..... | \$750.00 |
| 22 | 9. The following retail spirits license fees | |
| 23 | shall be determined by the latest Federal | |
| 24 | Decennial Census: | |

1	a.	Retail Spirits License for cities and	
2		towns from 200 to 2,500 population.....	\$305.00
3	b.	Retail Spirits License for cities and	
4		towns from 2,501 to 5,000 population.....	\$605.00
5	c.	Retail Spirits License for cities and	
6		towns over 5,000 population.....	\$905.00
7	10.	Retail Wine License.....	\$1,000.00
8	11.	Retail Beer License.....	\$500.00
9	12.	Mixed Beverage License.....	\$1,005.00
10			(initial license)
11			\$905.00
12			(renewal)
13	13.	Mixed Beverage/Caterer Combination License.....	\$1,250.00
14	14.	On-Premises Beer and Wine License.....	\$500.00
15			(initial license)
16			\$450.00
17			(renewal)
18	15.	Bottle Club License.....	\$1,000.00
19			(initial license)
20			\$900.00
21			(renewal)
22	16.	Caterer License.....	\$1,005.00
23			(initial license)
24			\$905.00

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

1	32.	Charitable Alcoholic Beverage License.....	\$55.00
2	33.	Winemaker Self-Distribution License.....	\$750.00
3	34.	Annual Public Event License.....	\$1,005.00
4	35.	One-Time Public Event License.....	\$255.00
5	36.	Small Brewer Self-Distribution License.....	\$750.00
6	37.	Brewpub License.....	\$1,005.00
7	38.	Brewpub Self-Distribution License.....	\$750.00
8	39.	Complimentary Beverage License.....	\$75.00
9	40.	Satellite Tasting Room License.....	\$100.00
10	41.	<u>Third-Party Vendor Business License.....</u>	<u>\$500.00</u>
11	42.	<u>Third-Party Vendor Delivery Driver License.....</u>	<u>\$30.00</u>

B. 1. There shall be added to the initial or renewal fees for a Mixed Beverage License an administrative fee, which shall not be deemed to be a license fee, in the amount of Five Hundred Dollars (\$500.00), which shall be paid at the same time and in the same manner as the license fees prescribed by paragraph 12 of subsection A of this section; provided, this fee shall not be assessed against service organizations or fraternal beneficiary societies which are exempt under Section 501(c)(19), (8) or (10) of the Internal Revenue Code.

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

1 manner as the license fee prescribed by paragraph 13 of subsection A
2 of this section.

3 C. Notwithstanding the provisions of subsection A of this
4 section:

5 1. The license fee for a mixed beverage or bottle club license
6 for those service organizations or fraternal beneficiary societies
7 which are exempt under Section 501(c)(19), (8) or (10) of the
8 Internal Revenue Code shall be Five Hundred Dollars (\$500.00) per
9 year; ~~and~~

10 2. The renewal fee for an airline/railroad/commercial passenger
11 vessel beverage license held by a railroad described in 49 U.S.C.,
12 Section 24301, shall be One Hundred Dollars (\$100.00); and

13 3. The annual fee for a third-party vendor business license and
14 the annual fee for a third-party vendor delivery driver shall be
15 collected by the ABLE Commission for deposit and credit to the
16 General Revenue Fund of this state.

17 D. An applicant may apply for and receive both an on-premises
18 beer and wine license and a caterer license.

19 E. All licenses, except as otherwise provided, shall be valid
20 for one (1) year from date of issuance unless revoked or
21 surrendered. Provided, all employee licenses shall be valid for two
22 (2) years.

23 F. The holder of a license, issued by the ABLE Commission, for
24 a bottle club located in a county of this state where the sale of

1 alcoholic beverages by the individual drink for on-premises
2 consumption has been authorized, may exchange the bottle club
3 license for a mixed beverage license or an on-premises beer and wine
4 license and operate the licensed premises as a mixed beverage
5 establishment or an on-premises beer and wine establishment subject
6 to the provisions of the Oklahoma Alcoholic Beverage Control Act.
7 There shall be no additional fee for such exchange and the mixed
8 beverage license or on-premises beer and wine license issued shall
9 expire one (1) year from the date of issuance of the original bottle
10 club license.

11 G. In addition to the applicable licensing fee, the following
12 surcharge shall be assessed annually on the following licenses:

- 13 1. Nonresident Seller or Manufacturer License..... \$2,500.00
- 14 2. Wine and Spirits Wholesaler License..... \$2,500.00
- 15 3. Beer Distributor..... \$1,000.00
- 16 4. Retail Spirits License for cities and towns
17 over 5,000 population..... \$250.00
- 18 5. Retail Spirits License for cities and towns
19 from 2,501 to 5,000 population..... \$200.00
- 20 6. Retail Spirits License for cities and towns
21 from 200 to 2,500 population..... \$150.00
- 22 7. Retail Wine License..... \$250.00
- 23 8. Retail Beer License..... \$250.00
- 24 9. Mixed Beverage License..... \$25.00

10. Mixed Beverage/Caterer Combination License.....	\$25.00
11. Caterer License.....	\$25.00
12. On-Premises Beer and Wine License.....	\$25.00
13. Annual Public Event License.....	\$25.00
14. Small Farm Winery License.....	\$25.00
15. Small Brewer License.....	\$35.00
16. Complimentary Beverage License.....	\$25.00
17. <u>Third-Party Vendor Business License.....</u>	<u>\$250.00</u>

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 4. 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

1 effective date of this act. The ABLE Commission shall promulgate
2 rules and forms for issuing licenses and procedures to enforce the
3 provisions for delivery of alcoholic beverage products by third-
4 party vendor businesses and third-party vendor delivery drivers.

5 B. 1. A third-party vendor business license shall authorize
6 the holder thereof to:

7 a. engage in the business of alcoholic beverage delivery
8 to consumers by contractual agreement with retail
9 licensees authorized for deliveries as provided by
10 Section 2-161 of Title 37A of the Oklahoma Statutes,
11 and

12 b. contract with a third-party vendor delivery driver
13 licensee to perform the delivery of alcoholic
14 beverages from the retail licensee.

15 2. A third-party vendor delivery driver license shall authorize
16 the holder thereof to perform alcoholic beverage deliveries to
17 consumers by contractual agreement with one or more third-party
18 vendor business licensees.

19 C. 1. A license issued by the ABLE Commission to a third-party
20 vendor delivery driver shall be displayed conspicuously in the
21 vehicle or be in the possession of the third-party delivery driver
22 while providing delivery services for a retail licensee.
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24

1 2. No licensee shall consent or allow the use or display of the
2 license by a person other than the person to whom the license was
3 issued.

4 3. No person shall use a license or exercise any privileges
5 granted by the license except as provided by the Oklahoma Alcoholic
6 Beverage Control Act.

7 D. 1. If a license issued to a third-party vendor business is
8 suspended or revoked by the ABLE Commission, all other third-party
9 vendor delivery driver licenses affiliated with the third-party
10 vendor's business shall cease to be valid.

11 2. If a license of a third-party vendor delivery driver is
12 suspended or revoked, this shall not invalidate licenses held by the
13 third-party vendor business or other affiliated third-party vendor
14 delivery driver licenses.

15 SECTION 5. This act shall become effective July 1, 2021.

16 SECTION 6. It being immediately necessary for the preservation
17 of the public peace, health or safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.

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21 58-1-1976 NP 3/9/2021 8:45:24 PM
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