

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                               STATE OF OKLAHOMA

3                               2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 3859

By: Strom of the House

and

7                               **Coleman** of the Senate

8  
9  
10                               COMMITTEE SUBSTITUTE

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

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

17                   SECTION 1.           AMENDATORY           37A O.S. 2021, Section 6-  
18                   102, is amended to read as follows:

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

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

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

4            a.    a mixed beverage, beer and wine, caterer, public  
5                    event, special event, bottle club, retail wine or  
6                    retail beer licensee may employ servers or sales  
7                    clerks who are at least eighteen (18) years of age,  
8                    except persons under twenty-one (21) years of age may  
9                    not serve in designated bar or lounge areas, and

10          b.    a mixed beverage, beer and wine, caterer, public  
11                    event, special event or bottle club licensee may  
12                    employ or hire musical bands who have musicians who  
13                    are under eighteen (18) years of age if each such  
14                    musician is either accompanied by a parent or legal  
15                    guardian or has on their person, to be made available  
16                    for inspection upon demand by any employee of the ABLE  
17                    Commission or law enforcement officer, a written,  
18                    notarized affidavit from the parent or legal guardian  
19                    giving the underage musician permission to perform in  
20                    designated bar or lounge areas;

21        3.    Give any alcoholic beverage as a prize, premium or  
22    consideration for any lottery, game of chance or skill or any type  
23    of competition;

1       4. Use any of the following means or inducements to stimulate  
2 the consumption of alcoholic beverages, including but not limited  
3 to:

4           a. deliver more than two drinks to one person at one  
5 time, except as provided for serving tasting flights  
6 defined in Section 6-102.1 of this title,

7           b. sell or offer to sell to any person or group of  
8 persons any drinks at a price that is less than six  
9 percent (6%) below the markup of the cost to the mixed  
10 beverage licensee; provided, a mixed beverage licensee  
11 shall be permitted to offer these drink specials on  
12 any particular hour of any particular day and shall  
13 not be required to offer these drink specials for an  
14 entire calendar week or from open to close, and shall  
15 not be required to offer such drink specials at all  
16 venues operating under the same mixed beverage  
17 license; provided, a mixed beverage licensee selling  
18 wine, six packs of beer, or cocktails to-go shall be  
19 permitted to offer these to-go drinks at a different  
20 price than on-premises drinks,

21           c. sell or offer to sell to any person an unlimited  
22 number of drinks during any set period of time for a  
23 fixed price, except at private functions not open to  
24 the public,

- 1           d.    sell or offer to sell drinks to any person or group of  
2               persons on any one day or portion thereof at prices  
3               less than those charged the general public on that  
4               day, except at private functions not open to the  
5               public,
- 6           e.    increase the volume of alcoholic beverages contained  
7               in a drink without increasing proportionately the  
8               price regularly charged for such drink during the same  
9               calendar week, or
- 10          f.    encourage or permit, on the licensed premises, any  
11               game or contest which involves drinking or the  
12               awarding of drinks as prizes.

13          Provided, that the provisions of this paragraph shall not  
14   prohibit the advertising or offering of food, entertainment or  
15   bottle service in licensed establishments;

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

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

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

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

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

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

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

1       B. 1. The compensation required by subparagraph a of paragraph  
2 8 of subsection A of this section shall be in the form of a radio  
3 frequency identification (RFID) device, mobile application or any  
4 other technology approved by the ABLE Commission containing a fixed  
5 amount of volume of thirty-two (32) ounces for beer and ten (10)  
6 ounces for wine that may be directly exchanged for beer or wine  
7 dispensed from the automated device:

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

18       2. In order to obtain an RFID device from a licensee, each  
19 patron shall produce a valid driver license, identification card or  
20 other government-issued document that contains a photograph of the  
21 individual and demonstrates that the individual is at least twenty-  
22 one (21) years of age. Each RFID device shall be programmed to  
23 require the production of the patron's valid identification before  
24

1 the RFID device can be used for the first time during any business  
2 day or for any subsequent reactivation.

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

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

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

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

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

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

1        1. The otherwise prohibited act was committed during the hours  
2 of 8 a.m. to midnight on the day of a scheduled home football game  
3 of institutions within The Oklahoma State System of Higher  
4 Education, and the establishment is located within two thousand  
5 (2,000) feet of the institution;

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

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

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

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19 COMMITTEE REPORT BY: COMMITTEE ON ALCOHOL, TOBACCO AND CONTROLLED  
20 SUBSTANCES, dated 03/03/2022 - DO PASS, As Amended and Coauthored.  
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