

1 **SENATE FLOOR VERSION**

2 February 17, 2022

3 SENATE BILL NO. 1784

By: Coleman

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5
6 An Act relating to alcoholic beverage deliveries;
7 amending 37A O.S. 2021, Sections 6-103, 6-105, and 6-
8 114, which relate to prohibited acts; providing
9 exception for certain employees of licensees to
10 conduct work under certain circumstances; and
11 declaring an emergency.

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

13 SECTION 1. AMENDATORY 37A O.S. 2021, Section 6-103, is
14 amended to read as follows:

15 Section 6-103. A. No retail spirits licensee shall:

16 1. Purchase or receive any alcoholic beverage other than from a
17 wine and spirits wholesaler, beer distributor, winery or small
18 brewer self-distribution licensee who elects to self-distribute;

19 2. Suffer or permit any retail container to be opened, or any
20 alcoholic beverage to be consumed on the licensed premises, except
21 when serving samples as authorized by Section 2-109 of this title or
22 otherwise permitted by law; provided, the licensee shall not permit
23 any alcoholic beverage content or retail container unsealed in
24 connection with sampling authorized by Section 2-109 of this title

1 to remain on the licensed premises at the close of business on that
2 day, excluding spirits;

3 3. Sell any alcoholic beverages at any hour other than between
4 the hours of 8:00 a.m. and midnight Monday through Saturday, and
5 shall not be permitted to be open on Thanksgiving Day or Christmas
6 Day; provided, a county may, pursuant to the provisions of
7 subsections B and C of Section 3-124 of this title, elect to allow
8 such sales between the hours of noon and midnight on Sunday. Retail
9 spirits licensees shall be permitted to sell alcoholic beverages on
10 the day of any General, Primary, Runoff Primary or Special Election
11 whether on a national, state, county or city election, provided that
12 the election day does not occur on any day on which such sales are
13 otherwise prohibited by law;

14 4. Sell spirits in a city or town, unless such city or town has
15 a population in excess of two hundred (200) according to the latest
16 Federal Decennial Census;

17 5. Sell any alcoholic beverage on credit; provided, that
18 acceptance by a licensee of a cash or debit card or a nationally
19 recognized credit card in lieu of actual cash payment does not
20 constitute the extension of credit; provided, further, as used in
21 this section:

22 a. "cash or debit card" means any instrument or device
23 whether known as a debit card or by any other name,
24 issued with or without fee by an issuer for the use of

1 the cardholder in depositing, obtaining or
2 transferring funds from a consumer banking electronic
3 facility, and

4 b. "nationally recognized credit card" means any
5 instrument or device, whether known as a credit card,
6 credit plate, charge plate or by any other name,
7 issued with or without fee by an issuer for the use of
8 the cardholder in obtaining money, goods, services or
9 anything else of value on credit which is accepted by
10 over one hundred retail locations;

11 6. Offer or furnish any prize, premium, gift or similar
12 inducement to a consumer in connection with the sale of alcoholic
13 beverages, except that goods or merchandise included by the
14 manufacturer in packaging with alcoholic beverages or for packaging
15 with alcoholic beverages shall not be included in this prohibition,
16 but no wholesaler or retailer shall sell any alcoholic beverage
17 prepackaged with other goods or merchandise at a price which is
18 greater than the price at which the alcoholic beverage alone is
19 sold; or

20 7. Pay for alcoholic beverages by a check or draft which is
21 dishonored by the drawee when presented to such drawee for payment;
22 and the ABLE Commission may cancel or suspend the license of any
23 retailer who has given a check or draft, as maker or endorser, which
24 is so dishonored upon presentation.

1 B. No retail spirits licensee shall permit any person under
2 twenty-one (21) years of age to enter into or remain within or about
3 the licensed premises unless accompanied by the person's parent or
4 legal guardian; provided, however, this restriction shall not apply
5 to an employee of a licensed beer distributor or wine and spirits
6 wholesaler who:

- 7 1. Is over eighteen (18) years of age;
- 8 2. Is accompanied by a coworker at least twenty-one (21) years
9 of age; and
- 10 3. Enters for the sole purposes of delivering product to the
11 licensee in the normal course of business.

12 SECTION 2. AMENDATORY 37A O.S. 2021, Section 6-105, is
13 amended to read as follows:

14 Section 6-105. No mixed beverage, public event, special event
15 or on-premises beer and wine licensee shall:

- 16 1. Purchase or receive any alcoholic beverage other than from a
17 person holding a wine and spirit wholesaler or beer distributor
18 license issued pursuant to the Oklahoma Alcoholic Beverage Control
19 Act; provided, a mixed beverage or on-premises beer and wine
20 licensee whose premises are a restaurant may purchase wine produced
21 at wineries in this state directly from a winemaker as provided in
22 Section 2 of Article XXVIII A of the Oklahoma Constitution;

1 2. Transport alcoholic beverages from the place of purchase to
2 the licensed premises unless the licensee also holds a private
3 carrier license issued by the ABLE Commission;

4 3. Use or allow the use of any mark or label on a container of
5 alcoholic beverage which is kept for sale which does not clearly and
6 precisely indicate the nature of the contents or which might deceive
7 or conceal the nature, composition, quantity, age or quality of such
8 beverage;

9 4. Keep or knowingly permit any alcoholic beverage to be kept,
10 brought or consumed on the licensed premises which is not allowed to
11 be sold or served upon such premises; or

12 5. Allow any person under twenty-one (21) years of age to enter
13 into, remain within or loiter about the designated bar area of the
14 licensed premises, except for persons who incidentally pass through
15 the designated area.

16 The prohibition in this subsection against persons under twenty-
17 one (21) years of age entering or remaining within the designated
18 bar area of the licensed premises shall not apply:

- 19 a. if the licensed premises are closed to the public
20 during a time the premises are legally permitted to be
21 open for business and the premises are used for a
22 private party at which alcoholic beverages may be
23 served to persons twenty-one (21) years of age or
24 older. Any alcoholic beverages served at a private

1 party on the licensed premises may be purchased from
2 the licensee at a negotiated price or purchased
3 privately and served at the private party on the
4 licensed premises. Any licensee who desires to
5 conduct such a private party shall notify the ABLE
6 Commission, in writing, at least ten (10) calendar
7 days prior to the private party. The notification
8 shall include the date, time and purpose of the
9 private party and any other information the ABLE
10 Commission may deem necessary, ~~or~~

11 b. to a designated bar area which is a concessions stand
12 serving beer and wine, in addition to food and non-
13 alcoholic beverages, which concession stand is located
14 at, in, or on the premises of a sports, music or
15 entertainment venue, convention center, fairgrounds or
16 similar facility, or

17 c. to an employee of a beer distributor or wine and
18 spirits wholesaler who is over eighteen (18) years of
19 age for the purposes of delivering product to the
20 licensee in the normal course of business.

21 SECTION 3. AMENDATORY 37A O.S. 2021, Section 6-114, is
22 amended to read as follows:

23 Section 6-114. A. 1. If the premises of a licensee of the
24 ABLE Commission contains a separate or enclosed lounge or bar area,

1 which has as its main purpose the sale or distribution of alcoholic
2 beverages for on-premises consumption, notwithstanding that as an
3 incidental service, meals or short order foods are made available
4 therein, no person under twenty-one (21) years of age shall be
5 admitted to such area, except for members of a musical band employed
6 or hired as provided in paragraph 2 of Section ~~142 of this act~~ 6-102
7 of this title when the band is to perform within such area,
8 employees of a beer distributor or wine and spirits wholesaler that
9 are over eighteen (18) years of age for the purposes of delivering
10 product to the licensee in the normal course of business, or persons
11 under twenty-one (21) years of age who are on the licensed premises
12 for the limited purpose of performing maintenance, construction,
13 remodeling, painting or other similar services relating to the
14 building or equipment installation, repair or maintenance on the
15 premises during those hours when the licensed establishment is
16 closed for business. The provisions of this section shall not
17 prohibit persons under twenty-one (21) years of age from being
18 admitted to an area which has as its main purpose some objective
19 other than the sale or mixing or serving of alcoholic beverages, in
20 which sales or serving of alcoholic beverages are incidental to the
21 main purpose, as long as the persons under twenty-one (21) years of
22 age are not sold or served alcoholic beverages. The incidental
23 service of food in the bar area shall not exempt a licensee from the
24 provisions of this section. The ABLE Commission shall have the

1 authority to designate the portions of the premises of a licensee
2 where persons under twenty-one (21) years of age shall not be
3 admitted pursuant to this section. When determining a licensee's
4 main purpose, a licensee that operates a full kitchen, sells food
5 items from a full menu, and has thirty-five percent (35%) or more of
6 its monthly gross sales attributable to food items, shall have as
7 its main purpose other than the sale of alcoholic beverages. The
8 main purpose of those mixed beverage establishments whose main
9 purpose was other than the sale of alcoholic beverages prior to
10 October 1, 2018, shall not automatically lose that designation upon
11 the elimination of low-point beer in the state. If the ABLE
12 Commission wishes to change said mixed beverage establishments' main
13 purpose designation, it shall be the burden of the ABLE Commission
14 to prove by clear and convincing evidence that said mixed beverage
15 establishments no longer qualify for that designation.

16 2. A new licensee that claims as its main purpose some
17 objective other than the sale of alcoholic beverages may be granted
18 a separate or enclosed lounge or bar area for a period of ninety
19 (90) days. At the end of that ninety-day period, the licensee shall
20 have the burden of showing that the business continues to qualify
21 for a separate or enclosed bar area. If the licensee fails to
22 satisfy this burden, then that licensee's main purpose shall
23 automatically convert to the sale of alcoholic beverages.

24

1 B. Except as otherwise provided, an admission charge shall not
2 be considered in any calculation designed to determine the main
3 purpose of an establishment pursuant to subsection A of this
4 section. As used in this section, "admission charge" means any form
5 of consideration received by an establishment from a person in order
6 for that person to gain entrance into the establishment.

7 C. The provisions of subsection B of this section shall not
8 apply:

9 1. If only persons eighteen (18) years of age or older are
10 permitted to enter the licensed premises; provided, if the licensee
11 is claiming an exception from the requirements of subsection B of
12 this section pursuant to this paragraph and fails to restrict the
13 entry by persons under age eighteen (18) into the licensed premises,
14 the ABLE Commission shall designate that only persons twenty-one
15 (21) years of age or older are allowed on the licensed premises;

16 2. If the licensed premises are owned or operated by a service
17 organization or fraternal establishment which is exempt under
18 Section 501(c)(19), (8), or (10) of the Internal Revenue Code; or

19 3. To a public event held in a facility owned or operated by
20 any agency, political subdivision or public trust of this state.

21 D. The ABLE Commission shall promulgate rules necessary to
22 implement the provisions of this section.

23 SECTION 4. It being immediately necessary for the preservation
24 of the public peace, health or safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

3 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
4 February 17, 2022 - DO PASS
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