

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 4209

By: Echols

AS INTRODUCED

An Act relating to alcoholic beverages; creating a delivery service license for delivery of alcoholic beverages; providing requirements to receive a delivery service license; providing actions a delivery service licensee may or may not undertake; providing delivery service license renewal amount; allowing a delivery service licensee to charge consumers a delivery fee; prohibiting delivery service licensee from charging, adding on, or collecting any portion of the amount of the retail sales price for the alcoholic beverages; prohibiting a retail spirits licensee from using delivery service licensees for the purpose of completing alcoholic beverage product deliveries to consumers; exempting a technology services company from needing a license; granting the Alcoholic Beverage Law Enforcement Commission the ability to enforce this act; prohibiting direct shipment of alcohol, liquor, wine, or beer from any manufacturer; providing nothing shall be construed to authorize the direct shipment of alcohol, liquor, wine, or beer from any manufacturer; providing no person shall use a license or exercise any privileges granted by the license except as provided by the Oklahoma Alcoholic Beverage Control Act; providing that no package containing alcoholic beverages may be delivered to or left unattended at a residence or business address; providing that the ABLE Commission is authorized to promulgate rules, regulations, forms, and procedures; providing that deliveries authorized by a licensee to be made 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; amending 37A O.S. 2021, Sections 2-101 and 2-161, which relate to annual fees and curbside pickup

1 and delivery; providing delivery service license  
2 annual fee; providing that a delivery service  
3 licensee may transport and deliver alcoholic beverage  
4 products; providing that a retail beer or retail wine  
5 licensee may sell curbside and deliver; providing  
6 that employees or independent contractors of retail  
7 beer or retail wine licensees or delivery service  
8 licensees shall be licensed to make alcoholic  
9 beverage product deliveries; providing that a  
10 delivery service licensee shall be held responsible  
11 for violations of alcoholic beverage laws or  
12 administrative rules of the ABLE Commission;  
13 providing for codification; providing an effective  
14 date; and declaring an emergency.

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

16 SECTION 1. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 2-162 of Title 37A, unless there  
18 is created a duplication in numbering, reads as follows:

19 A. Any individual, limited liability company, corporation, or  
20 partnership that is registered to do business in this state,  
21 regardless of the residency of the ownership of the entity, may  
22 apply for and be issued a delivery service license that authorizes  
23 the licensee to deliver alcoholic beverages from a store holding a  
24 retail beer or retail wine license, licensed by the Alcoholic  
Beverage Law Enforcement (ABLE) Commission to sell alcoholic  
beverage products, to any person in this state who is at least  
twenty-one (21) years of age for the individual's personal use and  
not for resale.

1 B. To receive a delivery service license, an applicant shall do  
2 all of the following:

3 1. File an application with the Alcoholic Beverage Law  
4 Enforcement (ABLE) Commission;

5 2. Provide to the ABLE Commission a sample contract that the  
6 applicant intends to enter into with a retail beer or retail wine  
7 licensee for the delivery of alcoholic beverage products, unless the  
8 applicant is the holder of a retail beer or retail wine license or  
9 operates under the same parent company as the retail beer or retail  
10 wine license holder;

11 3. Submit to the ABLE Commission an outline of internal or  
12 external training for delivery service personnel that addresses  
13 topics such as identifying underage persons, intoxicated persons,  
14 and fake or altered identification;

15 4. Provide an attestation that the applicant is at least  
16 twenty-one (21) years of age and has not been convicted of a felony  
17 in any state or federal court;

18 5. Provide proof of a general liability insurance policy in an  
19 amount not less than One Million Dollars (\$1,000,000.00) per  
20 occurrence; and

21 6. Be properly registered to conduct business in Oklahoma.

22 C. A delivery service licensee:

23 1. May contract with any retail beer or retail wine licensee,  
24 licensed to sell alcoholic beverage products for off-premises

1 consumption, for the purpose of delivering alcoholic beverage  
2 products;

3 2. May use its own employees or independent contractors who are  
4 at least twenty-one (21) years of age to deliver such alcoholic  
5 beverage products, provided such delivery service personnel shall  
6 not have been convicted of any criminal offense relating to  
7 alcoholic beverages. The delivery service licensee shall complete a  
8 criminal history records check on each delivery driver who delivers  
9 alcoholic beverages for a licensee;

10 3. May facilitate orders by telephone, Internet, or by other  
11 electronic means for the sale and delivery of alcoholic beverages.  
12 If payment is not received at the time of order, the delivery  
13 service licensee may act as an agent of the retail licensee in the  
14 collection of payments from the sale of alcoholic beverages, but the  
15 full amount of each order must be handled in a manner that gives the  
16 retail licensee control over the ultimate receipt of the payment  
17 from the consumer with the retail licensee operating as the merchant  
18 of record. The retail beer or retail wine licensee shall remain  
19 responsible for the proper remittance of all applicable taxes on the  
20 sale of the product;

21 4. Shall deliver only sealed containers of alcoholic beverage  
22 products;

1        5. Shall obtain from the consumer a confirmation that he or she  
2 is at least twenty-one (21) years of age at the time the order is  
3 placed;

4        6. Shall require the recipient, at the time of delivery, to  
5 provide valid photo identification verifying he or she is at least  
6 twenty-one (21) years of age and sign for the delivery;

7        7. Shall possess identification scanning software technology or  
8 a state-of-the-art alternative at the point of delivery to  
9 authenticate that the recipient is at least twenty-one (21) years of  
10 age, and collect the recipient's name and date of birth;

11       8. Shall return all alcoholic beverages to the retail beer or  
12 retail wine licensee if the recipient is under twenty-one (21) years  
13 of age, appears intoxicated, fails to provide proof of  
14 identification, fails or refuses to sign for delivery, fails to  
15 complete the identification verification process, declines to accept  
16 the delivery of alcoholic beverages or beer, or if any circumstances  
17 in the delivery environment indicate illegal conduct,  
18 overconsumption, or an otherwise unsafe environment for the  
19 consumption of alcohol. Such return shall occur on the same  
20 business day;

21       9. May not deliver any alcoholic beverage to any person located  
22 within a dry jurisdiction in Oklahoma;

23       10. Shall pick up alcoholic beverages for delivery only during  
24 lawful sales hours in that jurisdiction for the retail beer or

1 retail wine licensee holder, provided that orders may be delivered  
2 and completed on the same day within a reasonable time thereafter;

3 11. Shall permit the ABLE Commission to perform an audit of the  
4 licensee's records upon request and with sufficient notification;

5 12. Shall be deemed to have consented to the jurisdiction of  
6 the ABLE Commission and the Oklahoma courts concerning enforcement  
7 of this section and any related laws or rules; and

8 13. Shall be responsible for delivery of alcoholic beverage  
9 products as provided in this act and by rule.

10 D. A delivery service licensee may renew its license with the  
11 ABLE Commission by maintaining all qualifications, paying annually a  
12 renewal fee of Five Hundred Dollars (\$500.00), and providing the  
13 Commission with a true copy of its current license. The annual fee  
14 for delivery service licensees shall be collected by the ABLE  
15 Commission for deposit and credit to the General Revenue Fund of  
16 this state.

17 E. A delivery service licensee shall be authorized to charge  
18 the consumer a delivery fee but shall not charge, add on, or collect  
19 any portion of the amount of the retail sales price for the  
20 alcoholic beverages.

21 F. A retail spirits licensee shall be prohibited from using  
22 delivery service licensees for the purpose of completing alcoholic  
23 beverage product deliveries to consumers.

1       G. Nothing in this act shall be construed to require a  
2 technology services company to obtain a delivery service license if  
3 the company does not employ or contract with delivery agents, but  
4 merely provides software or a digital network application that  
5 connects consumers and retail beer or retail wine licensee for the  
6 delivery of alcoholic beverages from the retail beer or retail wine  
7 licensee. However, the act of connecting consumers to retail beer  
8 or retail wine licensee shall serve to grant jurisdiction to the  
9 State of Oklahoma.

10       H. The ABLE Commission may enforce the requirements of this  
11 section by the same administrative proceedings that apply to all  
12 other alcoholic beverage licensees.

13       I. The ABLE Commission may enforce the requirements of this  
14 section against any employee or independent contractor of a retail  
15 beer or retail wine licensee or delivery service licensee,  
16 irrespective of the status of any delivery service personnel as an  
17 independent contractor or employee. Delivery to a minor shall be  
18 treated as furnishing to a minor and shall result in any applicable  
19 disciplinary action, provided that the retail beer or retail wine  
20 licensee shall not be held liable for violations that occur after  
21 transferring possession of the alcohol beverage product to the  
22 delivery service licensee.

1 J. Nothing in this act shall be construed to authorize the  
2 direct shipment of alcohol, liquor, wine, or beer from any  
3 manufacturer.

4 K. 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 L. No package containing alcoholic beverages may be delivered  
8 to or left unattended at a residence or business address except for  
9 the delivery of such package in person to the purchaser confirmed to  
10 be twenty-one (21) years of age or older.

11 M. The ABLE Commission is authorized to promulgate rules,  
12 regulations, forms, and procedures necessary to implement and  
13 enforce the provisions of this section.

14 N. For purposes of this section, each delivery authorized by a  
15 licensee to be made to a consumer shall be deemed a direct hand-to-  
16 hand sale as though the consumer was physically present on the  
17 licensed premises and authorized by law by such licensee.

18 SECTION 2. AMENDATORY 37A O.S. 2021, Section 2-101, is  
19 amended to read as follows:

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

- 23 1. Brewer License..... \$1,250.00  
24 2. Small Brewer License..... \$125.00



1	3.	Distiller License.....	\$3,125.00
2	4.	Winemaker License.....	\$625.00
3	5.	Small Farm Winery License.....	\$75.00
4	6.	Rectifier License.....	\$3,125.00
5	7.	Wine and Spirits Wholesaler License.....	\$3,000.00
6	8.	Beer Distributor License.....	\$750.00
7	9.	The following retail spirits license fees	
8		shall be determined by the latest Federal	
9		Decennial Census:	
10	a.	Retail Spirits License for cities and	
11		towns from 200 to 2,500 population.....	\$305.00
12	b.	Retail Spirits License for cities and	
13		towns from 2,501 to 5,000 population.....	\$605.00
14	c.	Retail Spirits License for cities and	
15		towns over 5,000 population.....	\$905.00
16	10.	Retail Wine License.....	\$1,000.00
17	11.	Retail Beer License.....	\$500.00
18	12.	Mixed Beverage License.....	\$1,005.00
19			(initial license)
20			\$905.00
21			(renewal)
22	13.	Mixed Beverage/Caterer Combination License.....	\$1,250.00
23	14.	On-Premises Beer and Wine License.....	\$500.00
24			(initial license)

1		\$450.00
2		(renewal)
3	15. Bottle Club License.....	\$1,000.00
4		(initial license)
5		\$900.00
6		(renewal)
7	16. Caterer License.....	\$1,005.00
8		(initial license)
9		\$905.00
10		(renewal)
11	17. Annual Special Event License.....	\$55.00
12	18. Quarterly Special Event License.....	\$55.00
13	19. Hotel Beverage License.....	\$1,005.00
14		(initial license)
15		\$905.00
16		(renewal)
17	20. Airline/Railroad/Commercial Passenger Vessel Beverage	
18	License.....	\$1,005.00
19		(initial license)
20		\$905.00
21		(renewal)
22	21. Agent License.....	\$55.00
23	22. Employee License.....	\$30.00
24	23. Industrial License.....	\$23.00

1	24.	Carrier License.....	\$23.00
2	25.	Private Carrier License.....	\$23.00
3	26.	Bonded Warehouse License.....	\$190.00
4	27.	Storage License.....	\$23.00
5	28.	Nonresident Seller License .....	\$750.00
6	29.	Manufacturer License:	
7	a.	50 cases or less sold in Oklahoma in	
8		last calendar year.....	\$50.00
9	b.	51 to 500 cases sold in Oklahoma in	
10		last calendar year.....	\$75.00
11	c.	501 cases or more sold in Oklahoma in	
12		last calendar year.....	\$150.00
13	30.	Manufacturer's Agent License.....	\$55.00
14	31.	Sacramental Wine Supplier License.....	\$100.00
15	32.	Charitable Auction License.....	\$1.00
16	33.	Charitable Alcoholic Beverage License.....	\$55.00
17	34.	Winemaker Self-Distribution License.....	\$750.00
18	35.	Annual Public Event License.....	\$1,005.00
19	36.	One-Time Public Event License.....	\$255.00
20	37.	Small Brewer Self-Distribution License.....	\$750.00
21	38.	Brewpub License.....	\$1,005.00
22	39.	Brewpub Self-Distribution License.....	\$750.00
23	40.	Complimentary Beverage License.....	\$75.00
24	41.	Satellite Tasting Room License.....	\$100.00

1        42. Delivery Service License..... \$500.00

2        B. 1. There shall be added to the initial or renewal fees for  
3 a Mixed Beverage License an administrative fee, which shall not be  
4 deemed to be a license fee, in the amount of Five Hundred Dollars  
5 (\$500.00), which shall be paid at the same time and in the same  
6 manner as the license fees prescribed by paragraph 12 of subsection  
7 A of this section; provided, this fee shall not be assessed against  
8 service organizations or fraternal beneficiary societies which are  
9 exempt under Section 501(c)(19), (8) or (10) of the Internal Revenue  
10 Code.

11        2. There shall be added to the fee for a Mixed Beverage/Caterer  
12 Combination License an administrative fee, which shall not be deemed  
13 to be a license fee, in the amount of Two Hundred Fifty Dollars  
14 (\$250.00), which shall be paid at the same time and in the same  
15 manner as the license fee prescribed by paragraph 13 of subsection A  
16 of this section.

17        C. Notwithstanding the provisions of subsection A of this  
18 section:

19        1. The license fee for a mixed beverage or bottle club license  
20 for those service organizations or fraternal beneficiary societies  
21 which are exempt under Section 501(c)(19), (8) or (10) of the  
22 Internal Revenue Code shall be Five Hundred Dollars (\$500.00) per  
23 year; and  
24

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

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

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

10       F. The holder of a license, issued by the ABLE Commission, for  
11 a bottle club located in a county of this state where the sale of  
12 alcoholic beverages by the individual drink for on-premises  
13 consumption has been authorized, may exchange the bottle club  
14 license for a mixed beverage license or an on-premises beer and wine  
15 license and operate the licensed premises as a mixed beverage  
16 establishment or an on-premises beer and wine establishment subject  
17 to the provisions of the Oklahoma Alcoholic Beverage Control Act.  
18 There shall be no additional fee for such exchange and the mixed  
19 beverage license or on-premises beer and wine license issued shall  
20 expire one (1) year from the date of issuance of the original bottle  
21 club license.

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

24       1. Nonresident Seller License..... \$2,500.00

2. Manufacturer License:
  - a. 50 cases or less sold in Oklahoma in  
last calendar year..... \$100.00
  - b. 51 to 500 cases sold in Oklahoma in  
last calendar year..... \$225.00
  - c. 501 cases or more sold in Oklahoma in  
last calendar year..... \$450.00
3. Wine and Spirits Wholesaler License..... \$2,500.00
4. Beer Distributor..... \$1,000.00
5. Retail Spirits License for cities and towns  
over 5,000 population..... \$250.00
6. Retail Spirits License for cities and towns  
from 2,501 to 5,000 population..... \$200.00
7. Retail Spirits License for cities and towns  
from 200 to 2,500 population..... \$150.00
8. Retail Wine License..... \$250.00
9. Retail Beer License..... \$250.00
10. Mixed Beverage License..... \$25.00
11. Mixed Beverage/Caterer Combination License..... \$25.00
12. Caterer License..... \$25.00
13. On-Premises Beer and Wine License..... \$25.00
14. Annual Public Event License..... \$25.00
15. Small Farm Winery License..... \$25.00
16. Small Brewer License..... \$35.00

1 17. Complimentary Beverage License..... \$25.00

2 The surcharge shall be paid concurrent with the licensee's  
3 annual licensing fee and, in addition to Five Dollars (\$5.00) of the  
4 employee license fee, shall be deposited in the Alcoholic Beverage  
5 Governance Revolving Fund established pursuant to Section 5-128 of  
6 this title.

7 H. Any license issued by the ABLE Commission under this title  
8 may be relied upon by other licensees as a valid license, and no  
9 other licensee shall have any obligation to independently determine  
10 the validity of such license or be held liable solely as a  
11 consequence of another licensee's failure to maintain a valid  
12 license.

13 SECTION 3. AMENDATORY 37A O.S. 2021, Section 2-161, is  
14 amended to read as follows:

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

19 1. Only employees of the retail spirit licensee shall be  
20 permitted to make alcoholic beverage product deliveries to  
21 consumers;

22 2. Payment for alcoholic beverage product delivery by the  
23 retail spirit licensee may be made by cash, check, transportable  
24

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

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

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

10 1. Only employees of the licensed small brewer or small farm  
11 winery shall be permitted to make alcoholic beverage product  
12 deliveries to consumers;

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

17 3. Small brewers and small farm wineries shall be responsible  
18 for their delivery employees as provided in Section 2-133 of ~~Title~~  
19 ~~37A of the Oklahoma Statutes~~ this title.

20 C. Restaurants, bars and clubs holding mixed beverage, beer and  
21 wine, or caterer/mixed beverage licenses issued by the Oklahoma ABLE  
22 Commission may sell curbside and deliver only closed packages of  
23 beer and wine to consumers aged twenty-one (21) years and older as  
24 follows:



1        1. Only employees of such restaurant, bar or club licensee  
2 shall be permitted to make alcoholic beverage package deliveries to  
3 consumers;

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

8        3. Restaurants, bars and clubs licensed by the Oklahoma ABLE  
9 Commission shall be responsible for their delivery employees as  
10 provided in Section 2-133 of ~~Title 37A of the Oklahoma Statutes~~ this  
11 title.

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

17        1. Only employees of such licensed grocery or convenience store  
18 shall be permitted to make alcoholic beverage product deliveries to  
19 consumers;

20        2. Payment for alcoholic beverage product delivery by a  
21 licensed grocery or convenience store may be made by cash, check,  
22 transportable credit/debit card processors or advance ~~on-line~~ online  
23 payment methods; and  
24

1        3. Grocery and convenience store licensees shall be responsible  
2 for their delivery employees as provided in Section 2-133 of ~~Title~~  
3 ~~37A of the Oklahoma Statutes~~ this title.

4        E. Licensees authorized by this section to make alcoholic  
5 beverage product deliveries to consumers are prohibited from  
6 utilizing third-party vendors or delivery services for purposes of  
7 completing such product deliveries to consumers.

8        F. Licensees authorized by this section to make alcoholic  
9 beverage product deliveries to consumers shall comply with the laws,  
10 rules, procedures and executive orders incumbent on such licensee.

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

14        H. For purposes of this section each delivery authorized by a  
15 licensee to be made by his or her employee shall be deemed a direct  
16 hand-to-hand sale as though the consumer was physically present on  
17 the licensed premises and authorized by law by such licensee.

18        I. Notwithstanding any law or rule to the contrary, a delivery  
19 service licensee, or an employee or independent contractor of a  
20 delivery service licensee, in accordance with Section 1 of this act,  
21 may transport and deliver alcoholic beverage products, including  
22 curbside, from a retail beer or retail wine licensees to consumers  
23 aged twenty-one (21) years and older for the consumer's personal use  
24 and not for resale.

1       J. Employees or independent contractors of licensed grocery  
2 stores or convenience stores or delivery service licensees shall be  
3 permitted to make alcoholic beverage product deliveries to consumers  
4 aged twenty-one (21) years and older for the consumer's personal use  
5 and not for resale.

6       K. A delivery service licensee who is authorized by law and by  
7 contractual agreement with a grocery or convenience store licensee  
8 to deliver alcoholic beverage products to a consumer shall be held  
9 responsible for violations of alcoholic beverage laws or  
10 administrative rules of the ABLE Commission affecting his or her  
11 license privilege to deliver alcoholic beverage products to  
12 consumers.

13       SECTION 4. This act shall become effective July 1, 2022.

14       SECTION 5. It being immediately necessary for the preservation  
15 of the public peace, health or safety, an emergency is hereby  
16 declared to exist, by reason whereof this act shall take effect and  
17 be in full force from and after its passage and approval.

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19       58-2-10130       JL       01/13/22  
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