

1 **SENATE FLOOR VERSION**

2 April 10, 2023

3 ENGROSSED HOUSE
4 BILL NO. 1392

By: Bashore and Pittman of the
House

5 and

6 Coleman of the Senate

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8
9 An Act relating to alcoholic beverages; amending 37A
10 O.S. 2021, Section 6-102, as amended by Section 1,
Chapter 300, O.S.L. 2022 (37A O.S. Supp. 2022,
11 Section 6-102), which relates to the prohibited acts
of licensees; expanding the exceptions to the means
12 or inducements to stimulate the consumption of
alcoholic beverages; providing that a specific number
13 of beers in reusable containers may be delivered to
individuals for on-premises consumption; and
14 providing an effective date.

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

19 SECTION 1. AMENDATORY 37A O.S. 2021, Section 6-102, as
20 amended by Section 1, Chapter 300, O.S.L. 2022 (37A O.S. Supp. 2022,
21 Section 6-102), is amended to read as follows:

22 Section 6-102. A. No licensee of the ABLE Commission shall:
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1 1. Receive, possess or sell any alcoholic beverage except as
2 authorized by the Oklahoma Alcoholic Beverage Control Act and by the
3 license or permit which the licensee holds;

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

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

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

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

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

7 a. deliver more than two drinks to one person at one
8 time, except:

9 (1) as provided for serving tasting flights defined
10 in Section 6-102.1 of this title, or

11 (2) up to six (6) bottles or cans of beer in its
12 original packaging for on-premises consumption
13 may be delivered to one person at one time in a
14 reusable container, including but not limited to
15 a bucket or insulated cooler which may be cooled
16 by ice or another cooling method,

17 b. sell or offer to sell to any person or group of
18 persons any drinks at a price that is less than six
19 percent (6%) below the markup of the cost to the mixed
20 beverage licensee; provided, a mixed beverage licensee
21 shall be permitted to offer these drink specials on
22 any particular hour of any particular day and shall
23 not be required to offer these drink specials for an
24 entire calendar week or from open to close, and shall

1 not be required to offer such drink specials at all
2 venues operating under the same mixed beverage
3 license; provided, a mixed beverage licensee selling
4 wine, beer, or cocktails to-go shall be permitted to
5 offer these to-go drinks at a different price than on-
6 premises drinks,

7 c. sell or offer to sell to any person an unlimited
8 number of drinks during any set period of time for a
9 fixed price, except at private functions not open to
10 the public,

11 d. sell or offer to sell drinks to any person or group of
12 persons on any one day or portion thereof at prices
13 less than those charged the general public on that
14 day, except at private functions not open to the
15 public,

16 e. increase the volume of alcoholic beverages contained
17 in a drink without increasing proportionately the
18 price regularly charged for such drink during the same
19 calendar week, or

20 f. encourage or permit, on the licensed premises, any
21 game or contest which involves drinking or the
22 awarding of drinks as prizes.
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1 Provided, that the provisions of this paragraph shall not
2 prohibit the advertising or offering of food, entertainment or
3 bottle service in licensed establishments;

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

6 Provided, this prohibition shall not be applicable to closed
7 original containers of alcoholic beverages which are carried from
8 the licensed premises of a bottle club by a patron, closed original
9 wine containers removed from the premises of restaurants, hotels and
10 motels, or to closed original containers of alcoholic beverages
11 transported to and from the place of business of a licensed caterer
12 by the caterer or an employee of the caterer;

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

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

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

- 21 a. the licensee monitors and has the ability to control
22 the dispensing of such beer or wine, or both, from the
23 automated devices. "Automated device" shall mean any
24 mechanized device capable of dispensing wine or beer,

1 or both, directly to a patron in exchange for
2 compensation that a licensee has received directly
3 from the patron, and

- 4 b. each licensee offering a patron self-pour service of
5 wine or beer, or both, from any automated device shall
6 provide constant video monitoring of the automated
7 device at all times during which the licensee is open
8 to the public. The licensee shall keep recorded
9 footage from the video monitoring for at least sixty
10 (60) days, and shall provide the footage, upon
11 request, to any agent of the Director of the ABLE
12 Commission or other authorized law enforcement agent.

13 B. 1. The compensation required by subparagraph a of paragraph
14 8 of subsection A of this section shall be in the form of a radio
15 frequency identification (RFID) device, mobile application or any
16 other technology approved by the ABLE Commission containing a fixed
17 amount of volume of thirty-two (32) ounces for beer and ten (10)
18 ounces for wine that may be directly exchanged for beer or wine
19 dispensed from the automated device:

- 20 a. RFID devices may be assigned, used or reactivated only
21 during a business day,
22 b. each RFID device shall be obtained from the licensee
23 by a patron,
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1 c. a licensee shall not issue more than one active RFID
2 device to a patron, and

3 d. an RFID device shall be deemed active if the RFID
4 device contains volume credit or has not yet been used
5 to dispense ten (10) ounces of wine or thirty-two (32)
6 ounces of beer.

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

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

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

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

23 b. any patron in possession of an inactive RFID device
24 may, upon production of the patron's valid

1 identification to the licensee or licensee's employee,
2 have the RFID device reactivated to allow the
3 dispensing of an additional ten (10) ounces of wine or
4 thirty-two (32) ounces of beer from an automated
5 device.

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

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

13 1. The otherwise prohibited act was committed during the hours
14 of 8 a.m. to midnight on the day of a scheduled home football game
15 of institutions within The Oklahoma State System of Higher
16 Education, and the establishment is located within two thousand
17 (2,000) feet of the institution;

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

23 3. The patron remains on the connected, physical property of
24 the licensee or in a public area adjacent to the physical property

1 of the licensee with prior municipal approval; provided that written
2 notice of the use of the connected, physical property of the
3 licensee or public area shall be provided to the ABLE Commission at
4 least five (5) days prior to such use.

5 SECTION 2. This act shall become effective November 1, 2023.

6 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
7 April 10, 2023 - DO PASS
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