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March 25, 2024

ENGROSSED HOUSE
BILL NO. 1723

By: Marti and Pittman of the
House

and

Rosino of the Senate

An Act relating to alcoholic beverages; amending 37A O.S. 2021, Section 2-113, as amended by Section 1, Chapter 42, O.S.L. 2023 (37A O.S. Supp. 2023, Section 2-113), which relates to catering licenses; providing that a caterer may be issued a storage license; providing that upon issuance of a license to the on-premises beer and wine applicant, the mixed beverage/caterer combination applicant, or the mixed beverage applicant, any alcoholic beverages on the licensed storage premises may be transferred by the caterer to the on-premises beer and wine licensee, the mixed beverage/caterer combination licensee, or the mixed beverage licensee; and declaring an emergency.

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

SECTION 1. AMENDATORY 37A O.S. 2021, Section 2-113, as amended by Section 1, Chapter 42, O.S.L. 2023 (37A O.S. Supp. 2023, Section 2-113), is amended to read as follows:

Section 2-113. A. 1. A caterer license may be issued to any person for the purpose of sale, delivery or distribution of alcoholic beverages incidental to the sale or distribution of food

1 on a premises not licensed by the ABLE Commission. For purposes of
2 this section, "incidental to the sale or distribution of food" means
3 food sales constituting at least thirty-five percent (35%) of the
4 caterer's total combined annual sales. A caterer license shall not
5 be issued to a person whose main purpose is the sale of alcoholic
6 beverages.

7 2. A caterer license may only be issued to those persons that
8 prepare, sell and distribute food for consumption either on licensed
9 or unlicensed premises. In order to renew a caterer license, annual
10 food sales must constitute at least thirty-five percent (35%) of the
11 caterer's total combined sales based on the most recent calendar
12 year. A caterer shall not be required to prepare, sell and
13 distribute food at every catered event as long as the caterer
14 satisfies the requirement set forth in this section.

15 3. Each caterer shall submit an annual sales report containing
16 revenue attributable to alcoholic beverages, food and all other
17 revenues attributable to the catering service. The annual sales
18 report must be submitted thirty (30) days prior to expiration of the
19 caterer license on forms prescribed by the ABLE Commission. The
20 caterer license may not be renewed if the caterer fails to provide
21 complete or sufficient financial data.

22 4. Each caterer shall submit a monthly event report containing
23 information on all events scheduled for the subsequent month. If an
24 event is scheduled after the first day of the month for an event to

1 occur in the same month, then the caterer shall report that event
2 within twenty-four (24) hours of scheduling the event or within
3 twenty-four (24) hours prior to the event, whichever occurs first.
4 The monthly event report shall be submitted on the first day of each
5 month.

6 5. All reports shall be submitted electronically on forms
7 prescribed by the ABLE Commission. Provided, if the caterer does
8 not have access to the Internet, then monthly reports must be
9 submitted by facsimile to the ABLE Commission's office in Oklahoma
10 City, in which case the caterer must retain a copy of the facsimile
11 confirmation sheet for at least twelve (12) months.

12 6. Any caterer who fails to submit a monthly report shall have
13 the caterer license automatically suspended until such time that the
14 caterer has fully complied with all reporting requirements. Any
15 caterer whose annual food sales do not exceed thirty-five percent
16 (35%) of his or her total annual combined sales shall not have the
17 caterer's license renewed.

18 B. The ABLE Commission shall promulgate rules governing the
19 application for and the issuance of caterer licenses.

20 C. The restrictions and rules which apply to the sale of mixed
21 beverages on the premises of a mixed beverage licensee also apply to
22 the sale under the authority of a caterer license. Any act which if
23 done on the premises of a mixed beverage licensee would be a ground
24

1 for revocation or suspension of the mixed beverage license is a
2 ground for revocation or suspension of a caterer license.

3 D. If the premises where the event being catered is held are
4 already operating pursuant to another type of license issued by the
5 ABLE Commission, the caterer and the other licensee shall both be
6 responsible for the actions of the caterer and shall both be subject
7 to penalties for violations by the caterer of the Oklahoma Alcoholic
8 Beverage Control Act and any rules promulgated thereto.

9 E. A caterer licensee may not store alcoholic beverages unless
10 the licensee has a storage license issued by the ABLE Commission. A
11 caterer licensee selling beer and cider to consumers shall only
12 purchase such beer and cider from the distributor or wholesaler
13 within the county in which the licensee will be selling the beer and
14 cider to consumers.

15 F. A caterer may provide alcoholic beverage sales on the
16 premises of a person currently applying for an on-premises beer and
17 wine license, mixed beverage/caterer combination license, or mixed
18 beverage license, provided the following terms have been satisfied:

19 1. The caterer shall take reasonable steps to ensure that the
20 on-premises beer and wine applicant, mixed beverage/caterer
21 combination applicant, or mixed beverage applicant uses only
22 licensed employees to perform licensable activities while using the
23 caterer's license. The caterer shall use his or her best efforts to
24 attempt to have a licensed employee on-site supervising the sale of

1 such caterer's alcoholic beverages at all times, but the caterer
2 shall not be disciplined for failing to have a licensed employee on-
3 site. The caterer expressly acknowledges that he or she is liable
4 for all violations of the Oklahoma Alcoholic Beverage Control Act
5 and rules of the ABLE Commission that are committed by the on-
6 premises beer and wine applicant, the mixed beverage/caterer
7 combination applicant, or the mixed beverage applicant and its
8 employees during this period;

9 2. The caterer and the on-premises beer and wine applicant, the
10 mixed beverage/caterer combination applicant, or the mixed beverage
11 applicant must submit to the ABLE Commission a written agreement
12 setting forth all the terms of the catering agreement at least
13 twenty-four (24) hours prior to the commencement of the catered
14 event; ~~and~~

15 3. The caterer may not provide alcoholic beverage sales on the
16 unlicensed premises of the on-premises beer and wine applicant,
17 mixed beverage/caterer combination applicant, or the mixed beverage
18 applicant for more than sixty (60) days, or after the applicant's
19 license has been denied, whichever occurs first;

20 4. The caterer may be issued a storage license to be used to
21 store any alcoholic beverages purchased pursuant to this subsection
22 on the unlicensed premises of the applicant during the period of the
23 written agreement; and

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1 5. Upon the issuance of a license to the on-premises beer and
2 wine applicant, the mixed beverage/caterer combination applicant, or
3 the mixed beverage applicant, any alcoholic beverages on the
4 licensed storage premises may be transferred by the caterer to the
5 on-premises beer and wine licensee, the mixed beverage/caterer
6 combination licensee, or the mixed beverage licensee consistent with
7 the provisions of Section 2-155 of this title.

8 G. A caterer may provide alcoholic beverage services for
9 temporary public events which have been licensed and approved by the
10 ABLE Commission.

11 H. A caterer may provide alcoholic beverage services for a
12 mixed beverage licensee which holds a live performing arts
13 presentation and is open to the public not more than one hundred
14 twenty (120) days per year.

15 SECTION 2. It being immediately necessary for the preservation
16 of the public peace, health or safety, an emergency is hereby
17 declared to exist, by reason whereof this act shall take effect and
18 be in full force from and after its passage and approval.

19 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
20 March 25, 2024 - DO PASS
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