

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 3906

By: Fetgatter

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6  
7 AS INTRODUCED

8 An Act relating to the Oklahoma Alcoholic Control  
9 Act; amending Section 3, Chapter 366, O.S.L. 2016, as  
10 last amended by Section 1, Chapter 420, O.S.L. 2019  
11 (37A O.S. Supp. 2019, Section 1-103), which relates  
12 to definitions; modifying definition; adding  
13 definition for small farm producer; updating  
14 statutory references; and providing an effective  
15 date.

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

17 SECTION 1. AMENDATORY Section 3, Chapter 366, O.S.L.  
18 2016, as last amended by Section 1, Chapter 420, O.S.L. 2019 (37A  
19 O.S. Supp. 2019, Section 1-103v3), is amended to read as follows:

20 Section 1-103v3. As used in the Oklahoma Alcoholic Beverage  
21 Control Act:

22 1. "ABLE Commission" or "Commission" means the Alcoholic  
23 Beverage Laws Enforcement Commission;

24 2. "Alcohol" means and includes hydrated oxide of ethyl, ethyl  
alcohol, ethanol or spirits of wine, from whatever source or by  
whatever process produced. It does not include wood alcohol or

1 alcohol which has been denatured or produced as denatured in  
2 accordance with Acts of Congress and regulations promulgated  
3 thereunder;

4 3. "Alcoholic beverage" means alcohol, spirits, beer and wine  
5 as those terms are defined herein and also includes every liquid or  
6 solid, patented or not, containing alcohol, spirits, wine or beer  
7 and capable of being consumed as a beverage by human beings;

8 4. "Applicant" means any individual, legal or commercial  
9 business entity, or any individual involved in any legal or  
10 commercial business entity allowed to hold any license issued in  
11 accordance with the Oklahoma Alcoholic Beverage Control Act;

12 5. "Beer" means any beverage of alcohol by volume and obtained  
13 by the alcoholic fermentation of an infusion or decoction of barley,  
14 or other grain, malt or similar products. "Beer" may or may not  
15 contain hops or other vegetable products. "Beer" includes, among  
16 other things, beer, ale, stout, lager beer, porter and other malt or  
17 brewed liquors, but does not include sake, known as Japanese rice  
18 wine;

19 6. "Beer keg" means any manufacturer-sealed, single container  
20 that contains not less than four (4) gallons of beer;

21 7. "Beer distributor" means and includes any person licensed to  
22 distribute beer for retail sale in the state, but does not include a  
23 holder of a small brewer self-distribution license or brewpub self-  
24 distribution license. The term "distributor", as used in ~~this act~~

1 the Oklahoma Alcoholic Beverage Control Act, shall be construed to  
2 refer to a beer distributor;

3 8. "Bottle club" means any establishment in a county which has  
4 not authorized the retail sale of alcoholic beverages by the  
5 individual drink, which is required to be licensed to keep, mix and  
6 serve alcoholic beverages belonging to club members on club  
7 premises;

8 9. "Brand" means any word, name, group of letters, symbol or  
9 combination thereof, that is adopted and used by a licensed  
10 manufacturer to identify a specific beer and to distinguish that  
11 product from another beer;

12 10. "Brand extension" means:

13 a. ~~after the effective date of this act~~ October 1, 2018,  
14 any brand of beer or cider introduced by a  
15 manufacturer in this state which either:

16 (1) incorporates all or a substantial part of the  
17 unique features of a preexisting brand of the  
18 same licensed manufacturer, or

19 (2) relies to a significant extent on the goodwill  
20 associated with the preexisting brand, or

21 b. any brand of beer that a manufacturer, the majority of  
22 whose total volume of all brands of beer distributed  
23 in this state by such manufacturer on January 1, 2016,  
24 was distributed as low-point beer, desires to sell,

1 introduces, begins selling or theretofore has sold and  
2 desires to continue selling a strong beer in this  
3 state which either:

4 (1) incorporates or incorporated all or a substantial  
5 part of the unique features of a preexisting low-  
6 point beer brand of the same licensed  
7 manufacturer, or

8 (2) relies or relied to a significant extent on the  
9 goodwill associated with a preexisting low-point  
10 beer brand;

11 11. "Brewer" means and includes any person who manufactures for  
12 human consumption by the use of raw materials or other ingredients  
13 any beer upon which a license fee and a tax are imposed by any law  
14 of this state;

15 12. "Brewpub" means a licensed establishment operated on the  
16 premises of, or on premises located contiguous to, a small brewer,  
17 that prepares and serves food and beverages, including alcoholic  
18 beverages, for on-premises consumption;

19 13. "Cider" means any alcoholic beverage obtained by the  
20 alcoholic fermentation of fruit juice, including but not limited to  
21 flavored, sparkling or carbonated cider. For the purposes of the  
22 distribution of this product, cider may be distributed by either  
23 wine and spirits wholesalers or beer distributors;

1 14. "Convenience store" means any person primarily engaged in  
2 retailing a limited range of general household items and groceries,  
3 with extended hours of operation, whether or not engaged in retail  
4 sales of automotive fuels in combination with such sales;

5 15. "Convicted" and "conviction" mean and include a finding of  
6 guilt resulting from a plea of guilty or nolo contendere, the  
7 decision of a court or magistrate or the verdict of a jury,  
8 irrespective of the pronouncement of judgment or the suspension  
9 thereof;

10 16. "Director" means the Director of the ABLE Commission;

11 17. "Distiller" means any person who produces spirits from any  
12 source or substance, or any person who brews or makes mash, wort or  
13 wash, fit for distillation or for the production of spirits (except  
14 a person making or using such material in the authorized production  
15 of wine or beer, or the production of vinegar by fermentation), or  
16 any person who by any process separates alcoholic spirits from any  
17 fermented substance, or any person who, making or keeping mash, wort  
18 or wash, has also in his or her possession or use a still;

19 18. "Distributor agreement" means the written agreement between  
20 the distributor and manufacturer as set forth in Section 3-108 of  
21 this title;

22 19. "Drug store" means a person primarily engaged in retailing  
23 prescription and nonprescription drugs and medicines;

24

1       20. "Dual-strength beer" means a brand of beer that,  
2 immediately prior to April 15, 2017, was being sold and distributed  
3 in this state:

4           a. as a low-point beer pursuant to the Low-Point Beer  
5 Distribution Act in effect immediately prior to ~~the~~  
6 ~~effective date of this act~~ October 1, 2018, and

7           b. as strong beer pursuant to the Alcoholic Beverage  
8 Control Act in effect immediately prior to ~~the~~  
9 ~~effective date of this act~~ October 1, 2018,

10 and continues to be sold and distributed as such on October 1, 2018.  
11 Dual-strength beer does not include a brand of beer that arose as a  
12 result of a brand extension as defined in this section;

13       21. "Fair market value" means the value in the subject  
14 territory covered by the written agreement with the distributor or  
15 wholesaler that would be determined in an arm's length transaction  
16 entered into without duress or threat of termination of the  
17 distributor's or wholesaler's rights and shall include all elements  
18 of value, including goodwill and going-concern value;

19       22. "Good cause" means:

20           a. failure by the distributor to comply with the material  
21 and reasonable provisions of a written agreement or  
22 understanding with the manufacturer, or

23           b. failure by the distributor to comply with the duty of  
24 good faith;

1       23. "Good faith" means the duty of each party to any  
2 distributor agreement and all officers, employees or agents thereof  
3 to act with honesty in fact and within reasonable standards of fair  
4 dealing in the trade;

5       24. "Grocery store" means a person primarily engaged in  
6 retailing a general line of food, such as canned or frozen foods,  
7 fresh fruits and vegetables, and fresh and prepared meats, fish and  
8 poultry;

9       25. "Hotel" or "motel" means an establishment which is licensed  
10 to sell alcoholic beverages by the individual drink and which  
11 contains guestroom accommodations with respect to which the  
12 predominant relationship existing between the occupants thereof and  
13 the owner or operator of the establishment is that of innkeeper and  
14 guest. For purposes of this section, the existence of other legal  
15 relationships as between some occupants and the owner or operator  
16 thereof shall be immaterial;

17       26. "Legal newspaper" means a newspaper meeting the requisites  
18 of a newspaper for publication of legal notices as prescribed in  
19 Sections 101 through 114 of Title 25 of the Oklahoma Statutes;

20       27. "Licensee" means any person holding a license under the  
21 Oklahoma Alcoholic Beverage Control Act, and any agent, servant or  
22 employee of such licensee while in the performance of any act or  
23 duty in connection with the licensed business or on the licensed  
24 premises;

1       28. "Low-point beer" shall mean any beverages containing more  
2 than one-half of one percent (1/2 of 1%) alcohol by volume, and not  
3 more than three and two-tenths percent (3.2%) alcohol by weight,  
4 including but not limited to, beer or cereal malt beverages obtained  
5 by the alcoholic fermentation of an infusion by barley or other  
6 grain, malt or similar products;

7       29. "Manufacturer" means a brewer, distiller, winemaker,  
8 rectifier or bottler of any alcoholic beverage and its subsidiaries,  
9 affiliates and parent companies;

10       30. "Manufacturer's agent" means a salaried or commissioned  
11 salesperson who is the agent authorized to act on behalf of the  
12 manufacturer or nonresident seller in the state;

13       31. "Meals" means foods commonly ordered at lunch or dinner and  
14 at least part of which is cooked on the licensed premises and  
15 requires the use of dining implements for consumption. Provided,  
16 that the service of only food such as appetizers, sandwiches, salads  
17 or desserts shall not be considered "meals";

18       32. "Mini-bar" means a closed container, either refrigerated in  
19 whole or in part, or nonrefrigerated, and access to the interior of  
20 which is:

- 21           a. restricted by means of a locking device which requires
- 22                 the use of a key, magnetic card or similar device, or
- 23           b. controlled at all times by the licensee;

1 33. "Mixed beverage cooler" means any beverage, by whatever  
2 name designated, consisting of an alcoholic beverage and fruit or  
3 vegetable juice, fruit or vegetable flavorings, dairy products or  
4 carbonated water containing more than one-half of one percent (1/2  
5 of 1%) of alcohol measured by volume but not more than seven percent  
6 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is  
7 packaged in a container not larger than three hundred seventy-five  
8 (375) milliliters. Such term shall include but not be limited to  
9 the beverage popularly known as a "wine cooler";

10 34. "Mixed beverages" means one or more servings of a beverage  
11 composed in whole or part of an alcoholic beverage in a sealed or  
12 unsealed container of any legal size for consumption on the premises  
13 where served or sold by the holder of a mixed beverage, beer and  
14 wine, caterer, public event, charitable event or special event  
15 license;

16 35. "Motion picture theater" means an establishment which is  
17 licensed by Section 2-110 of this title to sell alcoholic beverages  
18 by the individual drink and where motion pictures are exhibited, and  
19 to which the general public is admitted;

20 36. "Nonresident seller" means any person licensed pursuant to  
21 Section 2-135 of this title;

22 37. "Retail salesperson" means a salesperson soliciting orders  
23 from and calling upon retail alcoholic beverage stores with regard  
24 to his or her product;

1       38. "Occupation" as used in connection with "occupation tax"  
2 means the sites occupied as the places of business of the  
3 manufacturers, wholesalers, beer distributors, retailers, mixed  
4 beverage licensees, on-premises beer and wine licensees, bottle  
5 clubs, caterers, public event and special event licensees;

6       39. "Original package" means any container of alcoholic  
7 beverage filled and stamped or sealed by the manufacturer;

8       40. "Package store" means any sole proprietor or partnership  
9 that qualifies to sell wine, beer and/or spirits for off-premises  
10 consumption and that is not a grocery store, convenience store or  
11 drug store, or other retail outlet that is not permitted to sell  
12 wine or beer for off-premises consumption;

13       41. "Patron" means any person, customer or visitor who is not  
14 employed by a licensee or who is not a licensee;

15       42. "Person" means an individual, any type of partnership,  
16 corporation, association, limited liability company or any  
17 individual involved in the legal structure of any such business  
18 entity;

19       43. "Premises" means the grounds and all buildings and  
20 appurtenances pertaining to the grounds including any adjacent  
21 premises if under the direct or indirect control of the licensee and  
22 the rooms and equipment under the control of the licensee and used  
23 in connection with or in furtherance of the business covered by a  
24 license. Provided that the ABLE Commission shall have the authority

1 to designate areas to be excluded from the licensed premises solely  
2 for the purpose of:

3 a. allowing the presence and consumption of alcoholic  
4 beverages by private parties which are closed to the  
5 general public, or

6 b. allowing the services of a caterer serving alcoholic  
7 beverages provided by a private party.

8 This exception shall in no way limit the licensee's concurrent  
9 responsibility for any violations of the Oklahoma Alcoholic Beverage  
10 Control Act occurring on the licensed premises;

11 44. "Private event" means a social gathering or event attended  
12 by invited guests who share a common cause, membership, business or  
13 task and have a prior established relationship. For purposes of  
14 this definition, advertisement for general public attendance or  
15 sales of tickets to the general public shall not constitute a  
16 private event;

17 45. "Public event" means any event that can be attended by the  
18 general public;

19 46. "Rectifier" means any person who rectifies, purifies or  
20 refines spirits or wines by any process (other than by original and  
21 continuous distillation, or original and continuous processing, from  
22 mash, wort, wash or other substance, through continuous closed  
23 vessels and pipes, until the production thereof is complete), and  
24 any person who, without rectifying, purifying or refining spirits,

1 shall by mixing (except for immediate consumption on the premises  
2 where mixed) such spirits, wine or other liquor with any material,  
3 manufactures any spurious, imitation or compound liquors for sale,  
4 under the name of whiskey, brandy, rum, gin, wine, spirits, cordials  
5 or any other name;

6 47. "Regulation" or "rule" means a formal rule of general  
7 application promulgated by the ABLE Commission as herein required;

8 48. "Restaurant" means an establishment that is licensed to  
9 sell alcoholic beverages by the individual drink for on-premises  
10 consumption and where food is prepared and sold for immediate  
11 consumption on the premises;

12 49. "Retail container for spirits and wines" means an original  
13 package of any capacity approved by the United States Bureau of  
14 Alcohol, Tobacco and Firearms;

15 50. "Retailer" means a package store, grocery store,  
16 convenience store or drug store licensed to sell alcoholic beverages  
17 for off-premises consumption pursuant to a Retail Spirits License,  
18 Retail Wine License or Retail Beer License;

19 51. "Sale" means any transfer, exchange or barter in any manner  
20 or by any means whatsoever, and includes and means all sales made by  
21 any person, whether as principal, proprietor or as an agent, servant  
22 or employee. The term "sale" is also declared to be and include the  
23 use or consumption in this state of any alcoholic beverage obtained  
24 within or imported from without this state, upon which the excise

1 tax levied by the Oklahoma Alcoholic Beverage Control Act has not  
2 been paid or exempted;

3 52. "Short-order food" means food other than full meals  
4 including but not limited to sandwiches, soups and salads. Provided  
5 that popcorn, chips and other similar snack food shall not be  
6 considered "short-order food";

7 53. "Small brewer" means a brewer who manufactures less than  
8 twenty-five thousand (25,000) barrels of beer annually pursuant to a  
9 validly issued Small Brewer License hereunder;

10 54. "Small farm producer" means a person that annually produces  
11 in this state no less than one hundred (100) vines of sound ripe  
12 grapes, one thousand (1,000) pounds of other sound ripe fruit or  
13 berries, or one hundred (100) pounds of honey;

14 55. "Small farm wine" means a wine that is produced by a small  
15 farm winery with seventy-five percent (75%) or more Oklahoma-grown  
16 grapes, berries, other fruits, honey or vegetables;

17 ~~55.~~ 56. "Small farm winery" means a wine-making establishment  
18 that uses grapes, berries, other fruits, honey or vegetables grown  
19 in this state to produce no less than five percent (5%) of the wine  
20 manufactured annually by the small farm winery and does not annually  
21 produce for sale more than fifteen thousand (15,000) gallons of wine  
22 as reported on the United States Department of the Treasury, Alcohol  
23 and Tobacco Tax and Trade Bureau, Report of Wine Premises Operations  
24 (TTB Form 5120.17);

1       ~~56.~~ 57. "Sparkling wine" means champagne or any artificially  
2 carbonated wine;

3       ~~57.~~ 58. "Special event" means an entertainment, recreation or  
4 marketing event that occurs at a single location on an irregular  
5 basis and at which alcoholic beverages are sold;

6       ~~58.~~ 59. "Spirits" means any beverage other than wine or beer,  
7 which contains more than one-half of one percent (1/2 of 1%) alcohol  
8 measured by volume, and obtained by distillation, whether or not  
9 mixed with other substances in solution and includes those products  
10 known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and  
11 fortified wines and similar compounds, but shall not include any  
12 alcohol liquid completely denatured in accordance with the Acts of  
13 Congress and regulations pursuant thereto;

14       ~~59.~~ 60. "Strong beer" means beer which, prior to ~~the effective~~  
15 ~~date of this act~~ October 1, 2018, was distributed pursuant to the  
16 Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of  
17 Title 37 of the Oklahoma Statutes;

18       ~~60.~~ 61. "Successor manufacturer" means a primary source of  
19 supply, a brewer, a cider manufacturer or an importer that acquires  
20 rights to a beer or cider brand from a predecessor manufacturer;

21       ~~61.~~ 62. "Tax Commission" means the Oklahoma Tax Commission;

22       ~~62.~~ 63. "Territory" means a geographic region with a specified  
23 boundary;

24

1       ~~63.~~ 64. "Wine and spirits wholesaler" or "wine and spirits  
2 distributor" means and includes any sole proprietorship or  
3 partnership licensed to distribute wine and spirits in the state.  
4 The term "wholesaler", as used in ~~this act~~ the Oklahoma Alcoholic  
5 Beverage Control Act, shall be construed to refer to a wine and  
6 spirits wholesaler;

7       ~~64.~~ 65. "Wine" means and includes any beverage containing more  
8 than one-half of one percent (1/2 of 1%) alcohol by volume and not  
9 more than twenty-four percent (24%) alcohol by volume at sixty (60)  
10 degrees Fahrenheit obtained by the fermentation of the natural  
11 contents of fruits, vegetables, honey, milk or other products  
12 containing sugar, whether or not other ingredients are added, and  
13 includes vermouth and sake, known as Japanese rice wine;

14       ~~65.~~ 66. "Winemaker" means and includes any person or  
15 establishment who manufactures for human consumption any wine upon  
16 which a license fee and a tax are imposed by any law of this state;  
17 and

18       ~~66.~~ 67. "Satellite tasting room" means a licensed establishment  
19 operated off the licensed premises of the holder of a small farm  
20 winery or winemaker license, which serves wine for on-premises or  
21 off-premises consumption.

22       Words in the plural include the singular, and vice versa, and  
23 words imparting the masculine gender include the feminine, as well  
24 as persons and licensees as defined in this section.

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SECTION 2. This act shall become effective November 1, 2020.

57-2-10137 SD 01/07/20