

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 ENGROSSED SENATE
5 BILL NO. 1542

By: Bice of the Senate

6 and

7 Kannady of the House

8
9 [alcoholic beverages - Alcoholic Beverage Control
10 Act - policy and scope of act - ~~effective dates~~ -
11 ~~emergency~~]

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

14 SECTION 1. AMENDATORY Section 2, Chapter 366, O.S.L.
15 2016 (37A O.S. Supp. 2017, Section 1-102), is amended to read as
16 follows:

17 Section 1-102. A. The purpose of the Oklahoma Alcoholic
18 Beverage Control Act is to implement the provisions of Article
19 XVIIIIA of the Oklahoma Constitution, as referred to the people for
20 their approval or rejection by the Secretary of State pursuant to
21 the provisions of Enrolled Senate Joint Resolution No. 68 of the 2nd
22 Session of the 55th Oklahoma Legislature. The Legislature hereby
23 declares that the Oklahoma Alcoholic Beverage Control Act is deemed
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1 to be a code, digest or revision of statutes pursuant to the
2 provisions of Section 57 of Article V of the Oklahoma Constitution.

3 B. All alcoholic beverages as herein defined except alcohol
4 produced for use as a motor fuel under a permit issued by the
5 Oklahoma State Department of Agriculture, Food, and Forestry shall
6 be subject to the provisions of the Oklahoma Alcoholic Beverage
7 Control Act.

8 C. The Legislature finds and declares that:

9 1. The state has a substantial interest in exercising its
10 powers and the powers granted to the states by the Twenty-first
11 Amendment to the Constitution of the United States and in regulating
12 the structure of the state's alcoholic beverage industry including
13 the activities of manufacturers, importers, wholesalers and
14 retailers, the methods by which alcoholic beverages are marketed,
15 and influences that affect the consumption levels of alcoholic
16 beverages by the people of the state;

17 2. The state's system of regulating the manufacture,
18 distribution and sale of alcoholic beverages has served this state
19 and its citizens well and has contributed to the economic growth and
20 stability of the state;

21 3. Changes in market dynamics and advances in technology may
22 have altered the way the alcoholic beverage industry operates, but
23 have not changed the state's desire for strict regulation of the
24 manufacture, importation, distribution, marketing and sale of

1 alcoholic beverages in accordance with the Oklahoma State
2 Constitution and laws and regulations enacted by the Legislature and
3 the Oklahoma Alcoholic Beverage Laws Enforcement Commission. Such
4 regulation advances the interest of the state in ensuring a
5 competitive and orderly market in the distribution and sale of
6 alcoholic beverages, promoting temperance in the use and consumption
7 of alcoholic beverages, and facilitating the collection of excise
8 taxes and fees. The purpose of the state's regulatory system is to
9 promote these interests by requiring economic separation between the
10 tiers that contributes to a fair, open and competitive market
11 resulting in interbrand and other competition within each tier, and
12 prevents disorderly market conditions, including but not limited to
13 the domination of local markets and the undue influence of one tier
14 over another. This purpose is through any direct or indirect
15 ownership interest, or any other financial or business obligation;

16 4. The state maintains an interest in the promotion of
17 temperance as a paramount public health, safety and welfare concern.
18 The Legislature further reaffirms that temperance is achieved,
19 consistent with structural regulation that promotes a competitive
20 and orderly market, by controlled access to, and responsible use and
21 consumption of, alcoholic beverages by persons of legal drinking
22 age; and

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1 5. All provisions of this act shall be literally construed for
2 the accomplishment of these purposes, and any exceptions are to be
3 narrowly interpreted and applied.

4 SECTION 2. AMENDATORY Section 4, Chapter 366, O.S.L.
5 2016, as amended by Section 9, Chapter 364, O.S.L. 2017 (37A O.S.
6 Supp. 2017, Section 1-104), is amended to read as follows:

7 Section 1-104. A. The Alcoholic Beverage Laws Enforcement
8 Commission created in Section 1 of Article XXVIII of the Oklahoma
9 Constitution is hereby re-created. The purpose of the Commission
10 shall be to enforce the alcoholic beverage laws of the state, and
11 the Commission shall have such power and authority to enforce such
12 laws, rules and regulations as shall be prescribed by the Oklahoma
13 Alcoholic Beverage Control Act.

14 B. The Commission shall consist of seven (7) members, to be
15 appointed by the Governor with the advice and consent of the State
16 Senate; provided, members serving on October 1, 2017, shall continue
17 to serve until such time as their terms would have expired pursuant
18 to the provisions of Section 1 of Article XXVIII of the Oklahoma
19 Constitution. Five of the members shall be at-large members
20 representing the lay citizenry. The remaining two members shall be
21 persons with law enforcement experience in this state. Any time
22 there is a vacancy on the Commission, the Governor shall appoint a
23 replacement, with the advice and consent of the State Senate, within
24 ninety (90) days.

1 C. Members of the Commission shall be appointed for a term of
2 five (5) years.

3 D. No more than four members of the Commission shall be
4 appointed from the same political party. No more than two members
5 of the Commission shall be appointed from the same federal
6 congressional district.

7 E. No member of the Commission shall hold any license
8 authorized by the Oklahoma Alcoholic Beverage Control Act, or have
9 any interest in any capacity, in the manufacture, sale, distribution
10 or transportation of alcoholic beverages.

11 F. The members of the Commission shall be removable from office
12 for cause as other officers not subject to impeachment.

13 G. The Commission shall appoint a Director, whose duties shall
14 be defined as provided in Section 1-108 of this title.

15 H. The State of Oklahoma shall take all necessary steps to
16 ensure the timely implementation of Enrolled Senate Joint Resolution
17 No. 68 of the 2nd Session of the 55th Oklahoma Legislature, if
18 approved by the voters. Consistent with this objective, the ABLE
19 Commission shall have the power to issue interim licenses prior to
20 October 1, 2018, as follows:

21 1. Except for the sale of wine or beer to the public, an
22 interim license shall allow all qualified retail wine and retail
23 beer licensees to perform all activities permissible under a full
24 license including but not limited to purchasing, stocking and

1 storing the wine and/or full-strength beer prior to October 1, 2018.
2 In order to qualify for an interim license, the licensee must
3 satisfy all the requirements set forth in Article XXVIII A of the
4 Oklahoma Constitution and this act. ~~The~~ This interim license shall
5 convert to a full license on October 1, 2018;

6 2. Package stores may install refrigerated coolers for the
7 storage of beer and wine prior to October 1, 2018, provided the
8 refrigerated coolers shall not be used to cool product below room
9 temperature prior to October 1, 2018; and

10 3. An interim license shall allow all qualified wine and
11 spirits wholesalers and beer distributors to perform all activities
12 permissible under a full license including but not limited to
13 selling and delivering wine and/or full-strength beer to all
14 qualified retail wine and retail beer licensees. A wine and spirits
15 wholesaler that has been designated by a manufacturer as the
16 exclusive distributor of its wine or spirits may post those
17 designated products by line-item, consistent with Section 3-116.2 of
18 this title, on September 15, 2018, for sale effective October 1,
19 2018. In order to qualify for an interim license, the wine and
20 spirits wholesaler and beer distributor must comply with the
21 provisions set forth in Article XXVIII A of the Oklahoma Constitution
22 and this act. The interim license shall convert to a full license
23 on October 1, 2018.

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1 Provided, however, that a manufacturer is only permitted to sell
2 beer or cider to a beer distributor holding a valid interim license
3 pursuant to this section as follows:

- 4 a. such sales may begin no sooner than September 1, 2018,
- 5 b. the beer distributor either must be assigned a beer
6 distributor territory by the manufacturer pursuant to
7 a distributor agreement to begin October 1, 2018, or
8 be a brewer or an affiliate of a brewer that will be
9 permitted to distribute beer within two territories
10 pursuant to the provisions of subsection E of Section
11 3-108 of the this title, and
- 12 c. the interim license only permits sales to retailers by
13 the interim licensee either in the distribution
14 territory as set forth in the distributor agreement or
15 in the two territories permitted pursuant to the
16 provisions of subsection E of Section 3-108 of this
17 title.

18 I. No retail wine or retail beer licensee may sell wine and/or
19 beer, other than low-point beer, and no package store may sell
20 refrigerated wine and/or beer, prior to October 1, 2018. The sale
21 or refrigeration of wine and/or beer in violation of this subsection
22 shall result in the revocation of the interim license and a monetary
23 fine of Twenty-five Thousand Dollars (\$25,000.00).

1 SECTION 3. AMENDATORY Section 13, Chapter 366, O.S.L.
2 2016, as amended by Section 10, Chapter 364, O.S.L. 2017 (37A O.S.
3 Supp. 2017, Section 2-101), is amended to read as follows:

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

- 7 1. Brewer License..... \$1,250.00
- 8 2. Small Brewer License..... \$125.00
- 9 3. Distiller License..... \$3,125.00
- 10 4. Winemaker License..... \$625.00
- 11 5. Small Farm Winery License..... \$75.00
- 12 6. Rectifier License..... \$3,125.00
- 13 7. Wine and Spirits Wholesaler License..... \$3,000.00
- 14 8. Beer Distributor License..... \$750.00

15 9. The following retail spirits license fees shall be
16 determined by the latest Federal Decennial Census:

- 17 a. Retail Spirits License for cities and towns from 200
18 to 2,500 population.....\$305.00
- 19 b. Retail Spirits License for cities and towns from 2,501
20 to 5,000 population..... \$605.00
- 21 c. Retail Spirits License for cities and towns over 5,000
22 population.....\$905.00
- 23 10. Retail Wine License..... \$1,000.00
- 24 11. Retail Beer License..... \$500.00

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|----|-----|-------------------------------------------------|-------------------|
| 1 | 12. | Mixed Beverage License..... | \$1,005.00 |
| 2 | | | (initial license) |
| 3 | | | \$905.00 |
| 4 | | | (renewal) |
| 5 | 13. | Mixed Beverage/Caterer Combination License..... | \$1,250.00 |
| 6 | 14. | On Premises Beer and Wine License..... | \$500.00 |
| 7 | | | (initial license) |
| 8 | | | \$450.00 |
| 9 | | | (renewal) |
| 10 | 15. | Bottle Club License..... | \$1,000.00 |
| 11 | | | (initial license) |
| 12 | | | \$900.00 |
| 13 | | | (renewal) |
| 14 | 16. | Caterer License..... | \$1,005.00 |
| 15 | | | (initial license) |
| 16 | | | \$905.00 |
| 17 | | | (renewal) |
| 18 | 17. | Annual Special Event License..... | \$55.00 |
| 19 | 18. | Quarterly Special Event License..... | \$55.00 |
| 20 | 19. | Hotel Beverage License..... | \$1,005.00 |
| 21 | | | (initial license) |
| 22 | | | \$905.00 |
| 23 | | | (renewal) |
| 24 | 20. | Airline/Railroad Beverage License..... | \$1,005.00 |

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| 1 | | (initial license) |
| 2 | | \$905.00 |
| 3 | | (renewal) |
| 4 | 21. | Agent License..... \$55.00 |
| 5 | 22. | Employee License..... \$30.00 |
| 6 | 23. | Industrial License..... \$23.00 |
| 7 | 24. | Carrier License..... \$23.00 |
| 8 | 25. | Private Carrier License..... \$23.00 |
| 9 | 26. | Bonded Warehouse License..... \$190.00 |
| 10 | 27. | Storage License..... \$23.00 |
| 11 | 28. | Nonresident, Seller License or Manufacturer's |
| 12 | | License..... \$750.00 |
| 13 | 29. | Manufacturer's Agent License..... \$55.00 |
| 14 | 30. | Sacramental Wine Supplier License..... \$100.00 |
| 15 | 31. | Charitable Auction License..... \$1.00 |
| 16 | 32. | Charitable Alcoholic Beverage License..... \$55.00 |
| 17 | 33. | Winemaker Self-Distribution License..... \$750.00 |
| 18 | 34. | Annual Public Event License..... \$1,005.00 |
| 19 | 35. | One-Time Public Event License..... \$255.00 |
| 20 | 36. | Small Brewer Self-Distribution License..... \$750.00 |
| 21 | 37. | Brewpub License..... \$1,005.00 |
| 22 | 38. | Brewpub Self-Distribution License..... \$750.00 |

23 B. 1. There shall be added to the initial or renewal fees for
24 a Mixed Beverage License an administrative fee, which shall not be

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

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

14 C. Notwithstanding the provisions of subsection A of this
15 section:

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

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

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

3 E. All licenses, except as otherwise provided, shall be valid
4 for one (1) year from date of issuance unless revoked or
5 surrendered. Provided, all employee licenses shall be valid for two
6 (2) years and all other licenses issued by the ABLE Commission prior
7 to October 1, 2018, with a one-year term shall be valid initially
8 from the date of issue until the earlier of the twentieth month
9 following the date of issue or December 31, 2019, and, if such
10 license is renewed, shall thereafter be treated as if issued on such
11 earlier date and subject to annual renewal on each anniversary of
12 such date.

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

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

- 3 1. Nonresident Seller or Manufacturer License..... \$2,500.00
- 4 2. Wine and Spirits Wholesaler License..... \$2,500.00
- 5 3. Beer Distributor..... \$1,000.00
- 6 4. Retail Spirits License for cities and towns
7 over 5,000 population..... \$250.00
- 8 5. Retail Spirits License for cities and towns
9 from 2,501 to 5,000 population..... \$200.00
- 10 6. Retail Spirits License for cities and towns
11 from 200 to 2,500 population..... \$150.00
- 12 7. Retail Wine License..... \$250.00
- 13 8. Retail Beer License..... \$250.00
- 14 9. Mixed Beverage License..... \$25.00
- 15 10. Mixed Beverage/Caterer Combination License..... \$25.00
- 16 11. Caterer License..... \$25.00
- 17 12. On-Premises Beer and Wine License..... \$25.00
- 18 13. Annual Public Event License..... \$25.00
- 19 14. Small Farm Winery License..... \$25.00
- 20 15. Small Brewer License..... \$35.00

21 The surcharge shall be paid concurrent with the licensee's
22 annual licensing fee and shall be deposited in the Alcoholic
23 Beverage Governance Revolving Fund established pursuant to Section
24 5-128 of this title.

1 H. Any license issued by the ABLE Commission under this title
2 may be relied upon by other licensees as a valid license, and no
3 other licensee shall have any obligation to independently determine
4 the validity of such license or be held liable solely as a
5 consequence of another licensee's failure to maintain a valid
6 license.

7 SECTION 4. AMENDATORY Section 32, Chapter 366, O.S.L.
8 2016 (37A O.S. Supp. 2017, Section 2-120), is amended to read as
9 follows:

10 Section 2-120. A wholesaler's agent license shall authorize the
11 holder thereof:

12 1. To represent only the holders of licenses within this state,
13 other than retailers, authorized to sell alcoholic beverages to
14 retail dealers in Oklahoma; and

15 2. To solicit and to take orders for the purchase of alcoholic
16 beverages from retailers including licensees authorized to sell
17 alcoholic beverages by the individual drink for on-premises
18 consumption.

19 Such license shall be issued only to agents and employees of the
20 holder of a license under the Oklahoma Alcoholic Beverage Control
21 Act, but no such license shall be required of an employee making
22 sales of alcoholic beverages on licensed premises of the employee's
23 principal or of an employee of the holder of a beer distributor
24 license regardless of such employee's job responsibilities.

1 SECTION 5. AMENDATORY Section 33, Chapter 366, O.S.L.
2 2016 (37A O.S. Supp. 2017, Section 2-121), is amended to read as
3 follows:

4 Section 2-121. An employee license shall authorize the holder
5 thereof to work in a licensed package store, retail spirits, retail
6 wine or retail beer establishment, brewpub, mixed beverage
7 establishment, beer and wine establishment, bottle club, public
8 event or any establishment where alcohol or alcoholic beverages are
9 sold, mixed or served. Persons employed by a mixed beverage, on-
10 premises beer and wine, retail wine, retail beer, public event or a
11 bottle club licensee who do not participate in the service, mixing
12 or sale of mixed beverages shall not be required to have an employee
13 license. Provided, however, that a manager employed by a mixed
14 beverage licensee, public event licensee or a bottle club shall be
15 required to have an employee license whether or not the manager
16 participates in the service, mixing or sale of mixed beverages.
17 Applicants for an employee license must be at least eighteen (18)
18 years of age and have a health card issued by the county in which
19 they are employed, if the county issues such a card; provided, the
20 provisions of this section shall not be construed to permit any
21 person under twenty-one (21) years of age to be employed to sell
22 spirits. Employees of a special event, caterer, unless catering a
23 mixed beverage-licensed premise or airline/railroad beverage
24 licensees shall not be required to obtain an employee license, and

1 employees of beer distributors and other licensees holding licenses
2 issued by the ABLE Commission shall not be required to obtain an
3 employee license if such employee only sells alcohol or alcoholic
4 beverages to establishments holding licenses issued by the ABLE
5 Commission and not to the public. Persons employed by a hotel
6 licensee who participate in the stocking of hotel room mini-bars or
7 in the handling of alcoholic beverages to be placed in such devices
8 shall be required to have an employee license. As a prerequisite to
9 the issuance of an employee license, the applicant shall be required
10 to have successfully completed a training program conducted by the
11 ABLE Commission, or by another entity approved by the ABLE
12 Commission, including an in-house training program conducted by the
13 employer.

14 SECTION 6. AMENDATORY Section 48, Chapter 366, O.S.L.
15 2016 (37A O.S. Supp. 2017, Section 2-136), is amended to read as
16 follows:

17 Section 2-136. A manufacturer's agent license shall authorize
18 the holder thereof to represent only the holders of a manufacturer's
19 license or nonresident seller license and to solicit and take orders
20 for the sale of wine and spirits for the purpose of resale. No such
21 license shall be issued to any person until it shall have been shown
22 to the satisfaction of the ABLE Commission that the applicant has
23 been duly authorized to act as the agent of the principal he or she
24 proposes to represent, and that the principal or principals he or

1 she proposes to represent has been duly authorized to do business in
2 the State of Oklahoma, and has appointed a service agent in this
3 state. No applicant for a manufacturer's agent license shall also
4 hold an agent license. It shall be unlawful for any person other
5 than the holder of a manufacturer's agent license or an agent
6 license to solicit or take orders in the state from a wine and
7 spirits wholesaler ~~or beer distributor~~.

8 SECTION 7. AMENDATORY Section 80, Chapter 366, O.S.L.
9 2016, as amended by Section 15, Chapter 364, O.S.L. 2017 (37A O.S.
10 Supp. 2017, Section 3-110), is amended to read as follows:

11 Section 3-110. A. A licensed distributor designated as the
12 licensed distributor for a beer brand within a designated sales
13 territory shall present that beer brand for sale to all on-premise
14 licensees on the same price basis and without discrimination and to
15 all off-premise licensees on the same price basis within a
16 particular county and without discrimination. A licensed
17 distributor shall not sell, supply or deliver, either directly or
18 indirectly through a third party, a beer brand to a licensed
19 retailer outside of the designated sales territory of the designated
20 distributor nor to any person the licensed distributor has reason to
21 believe will sell or supply any quantity of the beer brand to any
22 retail location outside of the designated sales territory of the
23 designated distributor.

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1 B. All beer shall only be transported by a marked conveyance
2 owned or leased by the licensed distributor ~~and operated by the~~
3 ~~licensed distributor or an employee of the distributor~~ for the
4 products of a licensed manufacturer within the designated sales
5 territory to the address and location of a licensed retailer within
6 that designated sales territory.

7 C. Any beer sold by the licensed distributor shall not be
8 delivered to, received by or stored at any place other than the
9 address and location of the licensed retailer for which state and
10 local retailer licenses or permits have been issued.

11 D. With the approval of the licensed manufacturer, a licensed
12 distributor may sell the designated brands to a licensed retailer
13 located in a designated sales territory of another licensed
14 distributor if that licensed distributor is temporarily unable for
15 any reason to provide the designated brands of the licensed
16 manufacturer within its designated sales territory.

17 E. All beer purchased by a licensed distributor for resale in
18 this state shall physically come into the possession of the licensed
19 distributor and be unloaded in and distributed from the licensed
20 warehouses of the licensed distributor located in this state prior
21 to being resold in this state.

22 SECTION 8. Sections 1 and 3 through 7 of this act shall become
23 effective October 1, 2018.

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1 ~~SECTION 9. Section 2 of this act shall become effective July 1,~~
2 ~~2018.~~

3 ~~SECTION 10. It being immediately necessary for the preservation~~
4 ~~of the public peace, health or safety, an emergency is hereby~~
5 ~~declared to exist, by reason whereof this act shall take effect and~~
6 ~~be in full force from and after its passage and approval.~~

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8 COMMITTEE REPORT BY: COMMITTEE ON BANKING AND BUSINESS, dated
9 04/03/2018 - DO PASS, As Amended.

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