

1 **SENATE FLOOR VERSION**

2 April 12, 2017

3 **AS AMENDED**

4 ENGROSSED HOUSE  
5 BILL NO. 2186

6 By: Williams, Henke, McDugle,  
7 Roberts (Dustin), Murdock  
8 and Osborn (Leslie) of the  
9 House

10 and

11 Holt and Pittman of the  
12 Senate

13  
14 **[ alcoholic beverages - definitions and motion  
15 picture theaters - certain retail licenses -  
16 repealers - effective date ]**

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

18 SECTION 1. AMENDATORY 37 O.S. 2011, Section 163.2, is  
19 amended to read as follows:

20 Section 163.2 In the administration of Section 163.1 et seq. of  
21 this title, the following words and phrases are given the meanings  
22 respectively indicated:

23 1. "Low-point beer" means and includes beverages containing  
24 more than one-half of one percent (1/2 of 1%) alcohol by volume, and  
not more than three and two-tenths percent (3.2%) alcohol by weight,  
including but not limited to beer or cereal malt beverages obtained

1 by the alcoholic fermentation of an infusion of barley or other  
2 grain, malt or similar products;

3 2. "Person" means and includes an individual, a trust or  
4 estate, a partnership, an association or a corporation;

5 3. "Manufacturer" means and includes any person who prepares  
6 for human consumption by the use of raw materials or other  
7 ingredients any low-point beer, as defined herein, upon which a  
8 license fee and a tax are imposed by any law of this state;

9 4. "Wholesaler" means and includes any person who sells any  
10 low-point beer, as defined herein, to a licensed retail dealer, as  
11 hereinafter defined, for resale;

12 5. "Retail dealer" means and includes any person who sells any  
13 low-point beer, as defined herein, at retail for consumption or use,  
14 and such definitions include state and county fair associations, and  
15 special licenses may be issued for the sale of low-point beer, as  
16 herein defined, by such associations, and to other persons for the  
17 sale of such low-point beer at rodeos, picnics, or other organized  
18 temporary assemblages of people. The term "retail dealer" also  
19 includes railways for the sale of such beverages, and licenses may  
20 be issued for each dining car or railway train, which railways and  
21 dining cars shall pay the same license fees as regular retail  
22 dealers;

23 6. "Sale" or "sales", for the purpose of the collection of the  
24 taxes imposed by any law of the state upon low-point beer, as

1 defined herein, is hereby defined to mean and include all sales by  
2 all wholesalers within this state, for money or any other valuable  
3 consideration, to retail dealers for resale; and, also, the term  
4 "sale" or "sales" taxable under Section 163.1 et seq. of this title  
5 means and includes all sales from manufacturers or wholesalers from  
6 outside this state, to retail dealers for resale to consumers or  
7 otherwise. The term "sale" or "sales" shall also include sales from  
8 manufacturers without the state to wholesalers located within the  
9 state;

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

15 8. "Motion picture theater" means a place an establishment  
16 where low-point beer is sold and motion pictures are exhibited, and  
17 ~~to which the general public is admitted, but does not include a~~  
18 ~~place where meals, as defined by this section, are served, if only~~  
19 ~~persons twenty one (21) years of age or older are admitted;~~

20 9. "Existing wholesaler" means a wholesaler who distributes a  
21 particular brand of low-point beer at the time a successor  
22 manufacturer acquires rights to manufacture or import the particular  
23 brand of low-point beer;

24

1       10. "Fair market value" means the value that would be  
2 determined in a transaction entered into without duress or threat of  
3 termination of the existing wholesaler's right and shall include all  
4 elements of value, including goodwill and going-concern value;

5       11. "Good cause" means:

6           a. failure by the wholesaler to comply with the  
7                 provisions of a written agreement or understanding  
8                 with the manufacturer, or

9           b. failure by the wholesaler to comply with the duty of  
10                good faith;

11       12. "Good faith" means the duty of each party to any franchise  
12 and all officers, employees or agents thereof to act with honesty in  
13 fact and within reasonable standards of fair dealing in the trade;

14       13. "Successor manufacturer" means a primary source of supply,  
15 a brewer or an importer that acquires rights to a low-point beer  
16 brand from a predecessor manufacturer;

17       14. "Successor wholesaler" means one or more wholesalers  
18 designated by a successor manufacturer to replace the existing  
19 wholesaler, for all or part of the existing wholesaler's territory,  
20 in the distribution of the existing low-point beer brand or brands;  
21 and

22       15. "On-premise consumption" shall include consumption within a  
23 single building owned or operated by any agency, political  
24 subdivision or public trust of this state, if the building or a part

1 thereof is defined as a common drinking area for consumption of low-  
2 point beer by resolution of the governing body that owns or operates  
3 the building.

4 SECTION 2. AMENDATORY 37 O.S. 2011, Section 163.25, is  
5 amended to read as follows:

6 Section 163.25 ~~No~~ A retail license or permit to sell low-point  
7 beer ~~shall~~ may be issued for any establishment that functions as a  
8 motion picture theater. ~~If an establishment, which has functioned~~  
9 ~~for some other purpose, has been licensed to sell such beverages and~~  
10 ~~subsequently is operated as a motion picture theater, the license or~~  
11 ~~permit shall be revoked.~~

12 SECTION 3. AMENDATORY 37 O.S. 2011, Section 506, as last  
13 amended by Section 15, Chapter 210, O.S.L. 2016 (37 O.S. Supp. 2016,  
14 Section 506), is amended to read as follows:

15 Section 506. When used in the Oklahoma Alcoholic Beverage  
16 Control Act, the following words and phrases shall have the  
17 following meaning:

18 1. "ABLE Commission" means the Alcoholic Beverage Laws  
19 Enforcement Commission;

20 2. "Alcohol" means and includes hydrated oxide of ethyl, ethyl  
21 alcohol, ethanol, or spirits of wine, from whatever source or by  
22 whatever process produced. It does not include wood alcohol or  
23 alcohol which has been denatured or produced as denatured in  
24

1 accordance with Acts of Congress and regulations promulgated  
2 thereunder;

3 3. "Alcoholic beverage" means alcohol, spirits, beer, and wine  
4 as those terms are defined herein and also includes every liquid or  
5 solid, patented or not, containing alcohol, spirits, wine or beer  
6 and capable of being consumed as a beverage by human beings, but  
7 does not include low-point beer as that term is defined in Section  
8 163.2 of this title;

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

13 5. "Beer" means any beverage containing more than three and  
14 two-tenths percent (3.2%) of alcohol by weight and obtained by the  
15 alcoholic fermentation of an infusion or decoction of barley, or  
16 other grain, malt or similar products. "Beer" may or may not  
17 contain hops or other vegetable products. "Beer" includes, among  
18 other things, beer, ale, stout, lager beer, porter and other malt or  
19 brewed liquors, but does not include sake, known as Japanese rice  
20 wine;

21 6. "Bottle club" means any establishment in a county which has  
22 not authorized the retail sale of alcoholic beverages by the  
23 individual drink, which is required to be licensed to keep, mix, and  
24

1 serve alcoholic beverages belonging to club members on club  
2 premises;

3 7. "Brewer" means any person who produces beer in this state;

4 8. "Class B wholesaler" means and includes any person doing any  
5 such acts or carrying on any such business that would require such  
6 person to obtain a Class B wholesaler license hereunder;

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

12 10. "Director" means the Director of the Alcoholic Beverage  
13 Laws Enforcement Commission under the supervision of the Commission;

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

22 12. "Hotel" or "motel" shall mean an establishment which is  
23 licensed to sell alcoholic beverages by the individual drink and  
24 which contains guestroom accommodations with respect to which the

1 predominant relationship existing between the occupants thereof and  
2 the owner or operator of the establishment is that of innkeeper and  
3 guest. For purposes of this section, the existence of other legal  
4 relationships as between some occupants and the owner or operator  
5 thereof shall be immaterial;

6 13. "Legal newspaper" means a newspaper meeting the requisites  
7 of a newspaper for publication of legal notices as prescribed in  
8 Sections 101 through 114 of Title 25 of the Oklahoma Statutes;

9 14. "Licensee" means any person holding a license under the  
10 Oklahoma Alcoholic Beverage Control Act, and any agent, servant, or  
11 employee of such licensee while in the performance of any act or  
12 duty in connection with the licensed business or on the licensed  
13 premises;

14 15. "Light beer" means a low-point beer controlled under this  
15 title;

16 16. "Light wine" means any wine containing not more than  
17 fourteen percent (14%) alcohol measured by volume at sixty (60)  
18 degrees Fahrenheit;

19 17. "Manufacturer's agent" means a salaried or commissioned  
20 salesman who sells to a wholesaler or Class B wholesaler only;

21 18. "Manufacturer" means a brewer, distiller, winemaker,  
22 rectifier, or bottler of any alcoholic beverage;

23 19. "Meals" means foods commonly ordered at lunch or dinner and  
24 at least part of which is cooked on the licensed premises and

1 requires the use of dining implements for consumption. Provided,  
2 that the service of only food such as appetizers, sandwiches, salads  
3 or desserts shall not be considered "meals";

4 20. "Mini-bar" means a closed container, either refrigerated,  
5 in whole or in part, or nonrefrigerated, and access to the interior  
6 of which is (1) restricted by means of a locking device which  
7 requires the use of a key, magnetic card, or similar device, or (2)  
8 controlled at all times by the licensee;

9 21. "Mixed beverage cooler" means any beverage, by whatever  
10 name designated, consisting of an alcoholic beverage and fruit or  
11 vegetable juice, fruit or vegetable flavorings, dairy products or  
12 carbonated water containing more than one-half of one percent (1/2  
13 of 1%) of alcohol measured by volume but not more than seven percent  
14 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is  
15 packaged in a container not larger than three hundred seventy-five  
16 (375) milliliters. Such term shall include, but not be limited to,  
17 the beverage popularly known as a "wine cooler";

18 22. "Mixed beverages" means one or more servings of a beverage  
19 composed in whole or part of an alcoholic beverage in a sealed or  
20 unsealed container of any legal size for consumption on the premises  
21 where served or sold by the holder of a mixed beverage, beer and  
22 wine, caterer, public event, charitable event or special event  
23 license;

24

1       23. "Motion picture theater" means ~~a place~~ an establishment  
2 where motion pictures are exhibited and to which the general public  
3 is admitted, ~~but does not include a place where meals, as defined by~~  
4 ~~this section, are served, if only persons over twenty-one (21) years~~  
5 ~~of age are admitted;~~

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

9       25. "Occupation" as used in connection with "occupation tax"  
10 means the sites occupied as the places of business of the  
11 manufacturers, wholesalers, Class B wholesalers, retailers, mixed  
12 beverage licensees, beer and wine licensees, bottle clubs, caterers,  
13 public event, and special event licensees;

14       26. "Original package" means any container of alcoholic  
15 beverage filled and stamped or sealed by the manufacturer;

16       27. "Patron" means any person, customer, or visitor who is not  
17 employed by a licensee or who is not a licensee;

18       28. "Person" means an individual, any type of partnership,  
19 corporation, association, limited liability company or any  
20 individual involved in the legal structure of any such business  
21 entity;

22       29. "Premises" means the grounds and all buildings and  
23 appurtenances pertaining to the grounds including any adjacent  
24 premises if under the direct or indirect control of the licensee and

1 the rooms and equipment under the control of the licensee and used  
2 in connection with or in furtherance of the business covered by a  
3 license. Provided that the ABLE Commission shall have the authority  
4 to designate areas to be excluded from the licensed premises solely  
5 for the purpose of:

6 a. allowing the presence and consumption of alcoholic  
7 beverages by private parties which are closed to the  
8 general public, or

9 b. allowing the services of a caterer serving alcoholic  
10 beverages provided by a private party.

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

14 30. "Public event" means any event that can be attended by the  
15 general public;

16 31. "Private event" means a social gathering or event attended  
17 by invited guests who share a common cause, membership, business or  
18 task and have a prior established relationship. For purposes of  
19 this definition, advertisement for general public attendance or  
20 sales of tickets to the general public shall not constitute a  
21 private event;

22 32. "Rectifier" means any person who rectifies, purifies, or  
23 refines spirits or wines by any process (other than by original and  
24 continuous distillation, or original and continuous processing, from

1 mash, wort, wash, or other substance, through continuous closed  
2 vessels and pipes, until the production thereof is complete), and  
3 any person who, without rectifying, purifying, or refining spirits,  
4 shall by mixing (except for immediate consumption on the premises  
5 where mixed) such spirits, wine, or other liquor with any material,  
6 manufactures any spurious, imitation, or compound liquors for sale,  
7 under the name of whiskey, brandy, rum, gin, wine, spirits,  
8 cordials, or any other name;

9 33. "Regulation" or "rule" means a formal rule of general  
10 application promulgated by the ABLE Commission as herein required;

11 34. "Restaurant" means an establishment that is licensed to  
12 sell alcoholic beverages by the individual drink for on-premises  
13 consumption and where food is prepared and sold for immediate  
14 consumption on the premises;

15 35. "Retail container for spirits and wines" means an original  
16 package of any capacity approved by the United States Bureau of  
17 Alcohol, Tobacco and Firearms;

18 36. "Retailer" means the holder of a Package Store License;

19 37. "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 38. "Short\_order food" means food other than full meals  
4 including but not limited to sandwiches, soups, and salads.  
5 Provided that popcorn, chips, and other similar snack food shall not  
6 be considered "short\_order food";

7 39. "Small Farm Wine" means a wine that is produced by a small  
8 farm winery with seventy-five percent (75%) or more Oklahoma-grown  
9 grapes, berries, other fruits, honey or vegetables;

10 40. "Small Farm Winery" means a wine-making establishment that  
11 does not annually produce for sale more than ten thousand (10,000)  
12 gallons of wine as reported on the United States Department of the  
13 Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of Wine  
14 Premises Operations (TTB Form 5120.17);

15 41. "Sparkling wine" means champagne or any artificially  
16 carbonated wine;

17 42. "Spirits" means any beverage other than wine, beer or light  
18 beer, which contains more than one-half of one percent (1/2 of 1%)  
19 alcohol measured by volume and obtained by distillation, whether or  
20 not mixed with other substances in solution and includes those  
21 products known as whiskey, brandy, rum, gin, vodka, liqueurs,  
22 cordials and fortified wines and similar compounds; but shall not  
23 include any alcohol liquid completely denatured in accordance with  
24 the Acts of Congress and regulations pursuant thereto;

1       43. "Wholesaler" means and includes any person doing any such  
2 acts or carrying on any such business or businesses that would  
3 require such person to obtain a wholesaler's license or licenses  
4 hereunder;

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

12       45. "Winemaker" means any person who produces wine; and

13       46. "Oklahoma winemaker" means a business premises in Oklahoma  
14 licensed pursuant to the Oklahoma Alcoholic Beverage Control Act  
15 wherein wine is produced by the licensee who must be a resident of  
16 the state. The wine product fermented in the licensed premises  
17 shall be of grapes, berries and other fruits and vegetables imported  
18 into this state and processed herein or shall be of grapes, berries  
19 and other fruits and vegetables grown in Oklahoma.

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

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1 SECTION 4. AMENDATORY 37 O.S. 2011, Section 521, as last  
2 amended by Section 1, Chapter 367, O.S.L. 2016 (37 O.S. Supp. 2016,  
3 Section 521), is amended to read as follows:

4 Section 521. A. A brewer license shall authorize the holder  
5 thereof: To manufacture, bottle, package, and store beer on  
6 licensed premises; to sell beer in this state to holders of Class B  
7 wholesaler licenses and retail licenses and to sell beer out of this  
8 state to qualified persons; to sell beer produced by the licensee to  
9 consumers twenty-one (21) years of age or older on the premises of  
10 the brewery; and to serve free samples of beer produced by the  
11 licensee to visitors twenty-one (21) years of age or older. For  
12 purposes of this section, no visitor may sample more than a total of  
13 twelve (12) fluid ounces of beer per day. The brewer must restrict  
14 the distribution and consumption of beer samples to an area within  
15 the licensed premises designated by the brewer. A current floor  
16 plan that includes the designated sampling area must be on file with  
17 the Oklahoma Alcoholic Beverage Laws Enforcement (ABLE) Commission.  
18 No visitor under twenty-one (21) years of age shall be permitted to  
19 enter this designated sampling area when samples are being  
20 distributed or consumed. Samples and sales may only be distributed  
21 or consumed between 10:00 a.m. and 9:00 p.m. Samples and sales of  
22 beer made or served by a brewery under this section shall not be  
23 considered a "sale" of beer within the meaning of Article XXVIII of  
24 the Oklahoma Constitution or Section 506 of this title; however,

1 such samples and sales of beer shall be considered beer removed or  
2 withdrawn from the brewery for "use or consumption" within the  
3 meaning of Section 542 of this title for excise tax determination  
4 and reporting requirements.

5 B. A distiller license shall authorize the holder thereof: To  
6 manufacture, bottle, package, and store spirits on licensed  
7 premises; to sell spirits in this state to licensed wholesalers and  
8 manufacturers only; to sell spirits out of this state to qualified  
9 persons; to purchase from licensed distillers and rectifiers in this  
10 state, and import spirits from without this state for manufacturing  
11 purposes in accordance with federal laws and regulations.

12 C. A winemaker license shall authorize the holder thereof: To  
13 manufacture (including such mixing, blending and cellar treatment as  
14 authorized by federal law), bottle, package, and store on licensed  
15 premises wine containing not more than twenty-four percent (24%)  
16 alcohol by volume, provided the bottle or package sizes authorized  
17 shall be limited to the capacities approved by the United States  
18 Alcohol and Tobacco Tax and Trade Bureau; to sell wine in this state  
19 to licensed wholesalers and manufacturers; to sell bottles of wine  
20 produced at the winery from grapes and other fruits and berries  
21 grown in this state, if available, to consumers on the premises of  
22 the winery; to serve visitors on the licensed premises samples of  
23 wine produced on the premises; to serve samples of wine produced at  
24 the winery at festivals and trade shows; to sell wine produced at

1 the winery, in original sealed containers, at festivals and trade  
2 shows; to sell wine out of this state to qualified persons; to  
3 purchase from licensed winemakers, distillers and rectifiers in this  
4 state, and to import into this state wine, brandy and fruit spirits  
5 for use in manufacturing in accordance with federal laws and  
6 regulations; provided, a winemaker either within or without this  
7 state that annually produces no more than ten thousand (10,000)  
8 gallons of wine may elect to sell and self-distribute the wine  
9 produced by such winemaker directly to licensed retail package  
10 stores and restaurants in this state; and provided further that:

11 1. Any such winemaker which elects to directly sell its wine to  
12 package stores and restaurants shall not also use a licensed  
13 wholesale distributor as a means of distribution, and shall be  
14 required to sell its wines to every package store and restaurant  
15 licensee who desires to purchase the same, on the same price basis  
16 and without discrimination;

17 2. If a winemaker or winery sells directly to a retail package  
18 store or restaurant, the winemaker shall transport the wine from the  
19 winemaker's winery to the premises where the wine is to be delivered  
20 only in vehicles owned or leased by the winemaker and not by common  
21 or private contract carrier and shall obtain all necessary permits  
22 as required by the Oklahoma Alcoholic Beverage Control Act; and

23 3. If the production volume limit applicable to winemakers is  
24 ruled to be unconstitutional by a court of competent jurisdiction,

1 then no winemaker shall be permitted to directly sell its wine to  
2 retail package stores or restaurants in this state.

3 D. A winemaker self-distribution license shall authorize a  
4 licensed winemaker within or without this state which is permitted  
5 by Section 3 of Article XXVIII of the Oklahoma Constitution and  
6 subsection C of this section, to distribute its wine directly to  
7 retail package stores and restaurants in this state and that elects  
8 to do so, to sell and deliver its wines directly to licensed retail  
9 package stores and restaurants in this state in full case lots only,  
10 and in accordance with the provisions of the Oklahoma Alcoholic  
11 Beverage Control Act and such rules as the ABLE Commission shall  
12 adopt.

13 E. A rectifier license shall authorize the holder thereof: To  
14 rectify spirits and wines, bottle, package, and store same on the  
15 licensed premises; to sell spirits and wines in this state to  
16 licensed wholesalers and manufacturers only; to sell spirits and  
17 wines out of this state to qualified persons; to purchase from  
18 licensed manufacturers in this state; and to import into this state  
19 for manufacturing purposes spirits and wines in accordance with  
20 federal laws and regulations.

21 F. 1. A wholesaler license shall authorize the holder thereof:  
22 To purchase and import into this state spirits and wines from  
23 persons authorized to sell same who are the holders of a nonresident  
24 seller license, and their agents who are the holders of

1 manufacturers agent licenses; to purchase spirits and wines from  
2 licensed distillers, rectifiers and winemakers in this state; to  
3 purchase spirits and wines from licensed wholesalers, to the extent  
4 set forth in paragraphs 2 and 3 of this subsection; to sell in  
5 retail containers in this state to retailers, mixed beverage,  
6 caterer, special event, public event, hotel beverage or  
7 airline/railroad beverage licensees, spirits and wines which have  
8 been received and unloaded at the bonded warehouse facilities of the  
9 wholesaler before such sale; to sell to licensed wholesalers, to the  
10 extent set forth in paragraphs 2 and 3 of this subsection, spirits  
11 and wines which have been received and unloaded at the bonded  
12 warehouse facilities of the wholesaler before such sale; and to sell  
13 spirits and wines out of this state to qualified persons. Provided,  
14 however, sales of spirits and wine in containers with a capacity of  
15 less than one-twentieth (1/20) gallon by a holder of a wholesaler  
16 license shall be in full case lots and in the original unbroken  
17 case. Wholesalers shall be authorized to place such signs outside  
18 their place of business as are required by Acts of Congress and by  
19 such laws and regulations promulgated under such Acts.

20 2. Wholesalers are prohibited from purchasing annually in  
21 excess of fifteen percent (15%) of their total spirits inventory and  
22 fifteen percent (15%) of their total wine inventory from one or more  
23 wholesalers. Wholesalers are also prohibited from purchasing  
24 annually in excess of fifteen percent (15%) of their inventory of

1 any individual brand of spirits or wine from one or more  
2 wholesalers. The volume of spirits and wine and of each brand that  
3 each wholesaler is permitted to purchase annually from other  
4 wholesalers shall be calculated by the ABLE Commission by  
5 multiplying fifteen percent (15%) by:

- 6 a. the total volume of spirits sales of the wholesaler,  
7 by liter, from the previous calendar year, and
- 8 b. the total volume of wine sales of the wholesaler, by  
9 liter, from the previous calendar year, and
- 10 c. the volume of sales of each brand of spirits or wine  
11 of the wholesaler, by liter, from the previous  
12 calendar year.

13 A wholesaler who did not post any sales of spirits, wine or of a  
14 particular brand in the previous calendar year shall be deemed to  
15 have sold the same volume of spirits, wine or of a particular brand  
16 as the wholesaler posting the smallest volumes of sales in spirits,  
17 wine or of a particular brand for that year for the purposes of this  
18 paragraph. Notwithstanding the foregoing, wholesalers shall not  
19 purchase any inventory in spirits or wine from any other wholesaler  
20 until such time that the purchasing wholesaler possesses an  
21 inventory valued at no less than Two Hundred Fifty Thousand Dollars  
22 (\$250,000.00). Inventory valuation shall be based on the original  
23 actual price paid by the purchasing wholesaler to the nonresident  
24 seller for the inventory.

1           3. A wholesaler may sell spirits and wine to other wholesalers  
2 or purchase spirits and wines from other wholesalers without  
3 complying with paragraph 2 of this subsection in the case of the  
4 sale, purchase, or other transfer or acquisition of the entire  
5 business of a wholesaler, including the inventory of spirits and  
6 wine.

7           4. A wholesaler license shall authorize the holder thereof to  
8 operate a single bonded warehouse with a single central office  
9 together with delivery facilities at a location in this state only  
10 at the principal place of business for which the wholesaler license  
11 was granted.

12           5. All licensed wholesalers shall register prices, purchase and  
13 keep on hand or have on order a fifteen-day supply of all brands  
14 constituting the top eighteen brands in total sales by all Oklahoma  
15 wholesalers during the past twelve-month period, according to the  
16 records of the ABLE Commission as revised by the ABLE Commission  
17 quarterly; provided, however, that not more than three brands of any  
18 particular nonresident seller shall be included in the top-brands  
19 classification. All purchase orders for these top eighteen brands  
20 must show an expected due delivery date. These purchase orders may  
21 only be canceled with prior approval of the Director of the ABLE  
22 Commission, unless a wholesaler shall have in its warehouse a  
23 fifteen-day supply of merchandise on such purchase order.

24

1 In order to allow the ABLE Commission to determine the top  
2 eighteen brands, wholesalers must submit to the ABLE Commission  
3 every sixty (60) days a sworn affidavit listing their top twenty-  
4 five brands in sales for the previous sixty (60) days, excluding  
5 sales to wholesalers. Such affidavits shall be submitted in  
6 conjunction with the original price postings of wholesalers.

7 A fifteen-day supply of a particular brand for a particular  
8 wholesaler shall be based upon the market share of the wholesaler,  
9 determined by first multiplying the total number of liters of such  
10 brand sold by all wholesalers to all retailers during the previous  
11 calendar year by the percentage that the total sales of wine and  
12 spirits of the particular wholesaler, in liters, for such calendar  
13 year bears to the total sales of wine and spirits, in liters,  
14 reported by all wholesalers for such calendar year; and then  
15 dividing by twenty-four (24); provided, that a fifteen-day supply  
16 for a wholesaler who has not been in business for the entirety of  
17 the previous calendar year shall be deemed to be equal to that of  
18 the wholesaler who was in business for the entirety of the previous  
19 calendar year and who reported the lowest volume of sales of wine  
20 and spirits, in liters, of any wholesaler having been in business  
21 for such period.

22 G. A Class B wholesaler license shall authorize the holder  
23 thereof: To purchase and import into this state beer from persons  
24 authorized to sell same who are the holders of nonresident seller

1 licenses, and their agents who are the holders of manufacturers  
2 agent licenses; to purchase beer from licensed brewers and Class B  
3 wholesalers in this state; to sell in retail containers to  
4 retailers, mixed beverage, caterer, special event, public event,  
5 hotel beverage, and airline/railroad beverage licensees in this  
6 state, beer which has been unloaded and stored at the holder's self-  
7 owned or leased and self-operated warehouse facilities for a period  
8 of at least twenty-four (24) hours before such sale; and to sell  
9 beer in this state to Class B wholesalers and out of this state to  
10 qualified persons, including federal instrumentalities and voluntary  
11 associations of military personnel on federal enclaves in this state  
12 over which this state has ceded jurisdiction.

13 H. A package store license shall authorize the holder thereof:  
14 To purchase alcohol, spirits, beer, and wine in retail containers  
15 from the holder of a brewer, wholesaler or Class B wholesaler  
16 license and to purchase wine from a winemaker who is permitted and  
17 has elected to self-distribute as provided in Section 3 of Article  
18 XXVIII of the Oklahoma Constitution and to sell same on the licensed  
19 premises in such containers to consumers for off-premises  
20 consumption only and not for resale; provided, wine, beer, and  
21 spirits may be sold to charitable organizations that are holders of  
22 charitable alcoholic beverage auction or charitable alcoholic  
23 beverage event licenses. All alcoholic beverages that are sold by a  
24 package store are to be sold at ordinary room temperature.

1 I. A mixed beverage license shall authorize the holder thereof:  
2 To purchase alcohol, spirits, beer or wine in retail containers from  
3 the holder of a wholesaler or Class B wholesaler license or as  
4 specifically provided by law and to sell, offer for sale and possess  
5 mixed beverages for on-premises consumption only; provided, the  
6 holder of a mixed beverage license issued for an establishment which  
7 is also a restaurant may purchase wine directly from a winemaker who  
8 is permitted and has elected to self-distribute as provided in  
9 Section 3 of Article XXVIII of the Oklahoma Constitution.

10 Sales and service of mixed beverages by holders of mixed  
11 beverage licenses shall be limited to the licensed premises of the  
12 licensee unless the holder of the mixed beverage license also  
13 obtains a caterer license or a mixed beverage/caterer combination  
14 license. A mixed beverage license shall only be issued in counties  
15 of this state where the sale of alcoholic beverages by the  
16 individual drink for on-premises consumption has been authorized. A  
17 separate license shall be required for each place of business. ~~No~~  
18 Upon application, a mixed beverage license shall be issued for any  
19 place of business functioning as a motion picture theater, as  
20 defined by Section 506 of this title. A mixed beverage licensee  
21 whose main purpose is hosting live performance art presentations may  
22 utilize the services of a licensed caterer for its alcoholic  
23 beverage service as long as it is not open to the public more than  
24 one hundred twenty (120) days per year.

1 J. A bottle club license shall authorize the holder thereof: To  
2 store, possess and mix alcoholic beverages belonging to members of  
3 the club and to serve such alcoholic beverages for on-premises  
4 consumption to club members. A bottle club license shall only be  
5 issued in counties of this state where the sale of alcoholic  
6 beverages by the individual drink for on-premises consumption has  
7 not been authorized. A separate license shall be required for each  
8 place of business.

9 K. A caterer license shall authorize the holder thereof: To  
10 sell mixed beverages for on-premises consumption incidental to the  
11 sale or distribution of food at particular functions, occasions, or  
12 events which are private and temporary in nature. A caterer license  
13 shall not be issued in lieu of a mixed beverage license. A caterer  
14 license shall only be issued or utilized in counties of this state  
15 where the sale of alcoholic beverages by the individual drink for  
16 on-premises consumption has been authorized. A separate license  
17 shall be required for each place of business.

18 A licensed caterer shall be authorized to sell mixed beverages  
19 for on-premises consumption incidental to the distribution of food  
20 at temporary private functions, at temporary public events that are  
21 licensed and approved by the ABLE Commission, and on the premises of  
22 a mixed beverage licensee whose main purpose is the hosting of live  
23 performing art presentations and is not open to the public more than  
24 one hundred twenty (120) days per year.

1 L. 1. An annual special event license shall authorize the  
2 holder thereof: To sell and distribute mixed beverages for  
3 consumption on the premises for which the license has been issued  
4 for up to four events to be held over a period not to exceed one (1)  
5 year, not to exceed two such events in any three-month period. For  
6 purposes of this paragraph, an event shall not exceed a period of  
7 ten (10) consecutive days. An annual special event license shall  
8 only be issued in counties of this state where the sale of alcoholic  
9 beverages by the individual drink for on-premises consumption has  
10 been authorized. The holder of an annual special event license  
11 shall provide written notice to the ABLE Commission of each special  
12 event not less than ten (10) days before the event is held.

13 2. A quarterly special event license shall authorize the holder  
14 thereof: To sell and distribute mixed beverages for consumption on  
15 the premises for which the license has been issued for up to three  
16 events to be held over a period not to exceed three (3) months. For  
17 purposes of this paragraph, an event shall not exceed a period of  
18 ten (10) consecutive days. A quarterly special event license shall  
19 only be issued in counties of this state where the sale of alcoholic  
20 beverages by the individual drink for on-premises consumption has  
21 been authorized. The holder of a quarterly special event license  
22 shall provide written notice to the ABLE Commission of each special  
23 event not less than ten (10) days before the event is held.

24

1           3. An annual public event license shall authorize the holder  
2 thereof: to sell and distribute mixed beverages for consumption on  
3 the premises for which the license has been issued for up to six  
4 events to be held over a period not to exceed one (1) year. The  
5 applicant for an annual public event license, who does not already  
6 hold a license issued by the ABLE Commission, shall make application  
7 not less than sixty (60) days before its first event. The ABLE  
8 Commission shall have the authority to waive the sixty-day  
9 requirement at its discretion. For purposes of this paragraph, an  
10 event shall not exceed a period of three (3) consecutive days. An  
11 annual public event license shall only be issued in counties of this  
12 state where the sale of alcoholic beverages by the individual drink  
13 for on-premises consumption has been authorized. The holder of an  
14 annual public event license shall provide written notice to the ABLE  
15 Commission of each subsequent public event not less than ten (10)  
16 days before the event is held. A public event license shall not be  
17 used in lieu of a mixed beverage license. The holder of an annual  
18 public event license may choose to utilize the services of a  
19 licensed caterer to provide and distribute the alcoholic beverages  
20 at their events. When the applicant chooses to utilize the services  
21 of a licensed caterer, the applicant shall declare upon application  
22 which licensed caterer will be used. The licensed caterer shall be  
23 responsible for payment of all applicable mixed beverage taxes

24

1 through the existing Mixed Beverage Tax Permit issued to his or her  
2 business by the Oklahoma Tax Commission.

3 4. A one-time public event license shall authorize the holder  
4 thereof: to sell and distribute mixed beverages for consumption on  
5 the premises for which the license has been issued. The applicant  
6 for a one-time public event license, who does not already hold a  
7 license issued by the ABLE Commission, shall make application not  
8 less than sixty (60) days before the event. The ABLE Commission  
9 shall have the authority to waive the sixty-day requirement at its  
10 discretion. For purposes of this paragraph, an event shall not  
11 exceed a period of three (3) consecutive days. A public event  
12 license shall only be issued in counties of this state where the  
13 sale of alcoholic beverages by the individual drink for on-premises  
14 consumption has been authorized. A public event license shall not  
15 be used in lieu of a mixed beverage license. The holder of a one-  
16 time public event license may choose to utilize the services of a  
17 licensed caterer to provide and distribute the alcoholic beverages  
18 at his or her event. When the applicant chooses to utilize the  
19 services of a licensed caterer, the applicant shall declare upon  
20 application which licensed caterer will be used. The licensed  
21 caterer shall be responsible for payment of all applicable mixed  
22 beverage taxes through the existing Mixed Beverage Tax Permit issued  
23 to his or her business by the Oklahoma Tax Commission.

24

1 M. A hotel beverage license shall authorize the holder thereof:  
2 To sell or serve alcoholic beverages in 50 milliliter spirits, 187  
3 milliliter wine, and 12-ounce malt beverage containers which are  
4 distributed from a hotel room mini-bar. A hotel beverage license  
5 shall only be issued in counties of this state where the sale of  
6 alcoholic beverages by the individual drink for on-premises  
7 consumption has been authorized. A hotel beverage license shall  
8 only be issued to a hotel or motel as defined by Section 506 of this  
9 title which is also the holder of a mixed beverage license.  
10 Provided, that application may be made simultaneously for both such  
11 licenses. A separate license shall be required for each place of  
12 business.

13 N. An airline/railroad beverage license shall authorize the  
14 holder thereof: To sell or serve alcoholic beverages in or from any  
15 size container on a commercial passenger airplane or railroad  
16 operated in compliance with a valid license, permit or certificate  
17 issued under the authority of the United States or this state, even  
18 though the airplane or train, in the course of its travel, may cross  
19 an area in which the sale of alcoholic beverages by the individual  
20 drink is not authorized and to store alcoholic beverages in sealed  
21 containers of any size at any airport or station regularly served by  
22 the licensee, in accordance with rules promulgated by the Alcoholic  
23 Beverage Laws Enforcement Commission. Alcoholic beverages purchased  
24 by the holder of an airline/railroad license from the holder of a

1 wholesaler license shall be presumed to be purchased for consumption  
2 outside the State of Oklahoma or in interstate commerce, and shall  
3 be exempt from the excise tax provided for in Section 553 of this  
4 title.

5 O. An agent license shall authorize the holder thereof: To  
6 represent only the holders of licenses within this state, other than  
7 retailers, authorized to sell alcoholic beverages to retail dealers  
8 in Oklahoma, and to solicit and to take orders for the purchase of  
9 alcoholic beverages from retailers including licensees authorized to  
10 sell alcoholic beverages by the individual drink for on-premises  
11 consumption. Such license shall be issued only to agents and  
12 employees of the holder of a license under the Oklahoma Alcoholic  
13 Beverage Control Act, but no such license shall be required of an  
14 employee making sales of alcoholic beverages on licensed premises of  
15 the employee's principal. No person holding an agent license shall  
16 be entitled to a manufacturers agent license.

17 P. An employee license shall authorize the holder thereof: To  
18 work in a package store, mixed beverage establishment, beer and wine  
19 establishment, bottle club, public event or any establishment where  
20 alcohol or alcoholic beverages are sold, mixed, or served. Persons  
21 employed by a mixed beverage licensee, beer and wine licensee,  
22 public event licensee or a bottle club who do not participate in the  
23 service, mixing, or sale of mixed beverages shall not be required to  
24 have an employee license. Provided, however, that a manager

1 employed by a mixed beverage licensee, public event licensee or a  
2 bottle club shall be required to have an employee license whether or  
3 not the manager participates in the service, mixing or sale of mixed  
4 beverages. Applicants for an employee license must have a health  
5 card issued by the county in which they are employed, if the county  
6 issues such a card. Employees of special event, caterer, unless  
7 catering a mixed beverage licensed premises, or airline/railroad  
8 beverage licensees shall not be required to obtain an employee  
9 license. Persons employed by a hotel licensee who participate in  
10 the stocking of hotel room mini-bars or in the handling of alcoholic  
11 beverages to be placed in such devices shall be required to have an  
12 employee license.

13 Q. An industrial license may be issued to persons desiring to  
14 import, transport, and use alcohol for the following purposes:

15 1. Manufacture of patent, proprietary, medicinal,  
16 pharmaceutical, antiseptic, and toilet preparations;

17 2. Manufacture of extracts, syrups, condiments, and food  
18 products; and

19 3. For use in scientific, chemical, mechanical, industrial, and  
20 medicinal products and purposes.

21 No other provisions of the Oklahoma Alcoholic Beverage Control  
22 Act shall apply to alcohol intended for industrial, medical,  
23 mechanical or scientific use.

24

1 Any person receiving alcohol under authority of an industrial  
2 license who shall use, permit, or cause same to be used for purposes  
3 other than authorized purposes specified above, and all such  
4 alcohol, shall be liable to all provisions of the Oklahoma Alcoholic  
5 Beverage Control Act, including payment of tax thereon.

6 No provisions of the Oklahoma Alcoholic Beverage Control Act  
7 shall apply to alcohol withdrawn by any person free of federal tax  
8 under a tax-free permit issued by the United States government, if  
9 such alcohol is received, stored, and used as authorized by federal  
10 laws.

11 R. A carrier license may be issued to any common carrier  
12 operating under a certificate of convenience and necessity issued by  
13 any duly authorized federal or state regulatory agency. Such  
14 license shall authorize the holder thereof to transport alcoholic  
15 beverages other than wine sold directly by a winemaker or winery to  
16 a retail package store or restaurant into, within, and out of this  
17 state under such terms, conditions, limitations, and restrictions as  
18 the ABLE Commission may prescribe by order issuing such license and  
19 by regulations.

20 S. A private carrier license may be issued to any carrier other  
21 than a common carrier described in subsection Q of this section.  
22 Such license shall authorize the holder thereof to transport  
23 alcoholic beverages other than wine sold directly by a winemaker or  
24 winery to a retail package store or restaurant into, within, or out

1 of this state under such terms, conditions, limitations, and  
2 restrictions as the ABLE Commission may prescribe by order issuing  
3 such license and by regulations. No carrier license or private  
4 carrier license shall be required of licensed brewers, distillers,  
5 winemakers, rectifiers, wholesalers, or Class B wholesalers, to  
6 transport alcoholic beverages from the place of purchase or  
7 acquisition to the licensed premises of such licensees and from such  
8 licensed premises to the licensed premises of the purchaser in  
9 vehicles owned or leased by such licensee when such transportation  
10 is for a lawful purpose and not for hire.

11 No carrier license or private carrier license shall be required  
12 of the holder of a package store, mixed beverage, caterer, special  
13 event, hotel beverage, public event or airline/railroad license to  
14 pick up alcoholic beverage orders from the licensees' wholesaler or  
15 Class B wholesaler from whom they are purchased, and to transport  
16 such alcoholic beverages from the place of purchase or acquisition  
17 to the licensed premise of such licensees in vehicles owned or under  
18 the control of such licensee or a licensed employee of such licensee  
19 under such terms, conditions, limitations and restrictions as the  
20 ABLE Commission may prescribe.

21 T. A bonded warehouse license shall authorize the holder  
22 thereof: To receive and store alcoholic beverages for the holders of  
23 storage licenses on the licensed premises of the bonded warehouse  
24 licensee. No goods, wares or merchandise other than alcoholic

1 beverages may be stored in the same bonded warehouse with alcoholic  
2 beverages. The holder of a bonded warehouse license shall furnish  
3 and file with the ABLE Commission a bond running to all bailers of  
4 alcoholic beverages under proper storage licenses and their  
5 assignees (including mortgagees or other bona fide lienholders)  
6 conditioned upon faithful performance of the terms and conditions of  
7 such bailments.

8 U. A storage license may be issued to a holder of a brewer,  
9 distiller, winemaker, rectifier, wholesaler, Class B wholesaler,  
10 nonresident seller, package store, mixed beverage, caterer, public  
11 event or hotel beverage license, and shall authorize the holder  
12 thereof: To store alcoholic beverages in a public warehouse holding  
13 a bonded warehouse license, and no goods, wares or merchandise other  
14 than alcoholic beverages may be stored in the same warehouse with  
15 alcoholic beverages in private warehouses owned or leased and  
16 operated by such licensees elsewhere than on their licensed  
17 premises. Provided:

18 1. A storage license issued to a Class B wholesaler shall  
19 permit the storage of light beer and permit the sale and delivery to  
20 retailers from the premises covered by such license;

21 2. Any licensee who is the holder of a mixed beverage/caterer  
22 combination license or the holder of a mixed beverage license and a  
23 hotel beverage license who is issued a storage license shall store  
24

1 all inventories of alcoholic beverages either on the premises of the  
2 mixed beverage establishment or in the warehouse;

3 3. A storage license shall not be required for a special event  
4 licensee storing alcoholic beverages for use at a subsequent event;

5 4. A storage license shall be required for a public event  
6 licensee storing alcoholic beverages for use at a subsequent event;  
7 and

8 5. Notwithstanding the provisions of subsection I of this  
9 section or any other provision of this title, a licensee who wholly  
10 owns more than one licensed mixed beverage establishment may store  
11 alcoholic beverages for each of the licensed establishments in one  
12 location under one storage license. Alcoholic beverages purchased  
13 and stored pursuant to the provisions of a storage license, for one  
14 licensed mixed beverage establishment may be transferred by a  
15 licensee to another licensed mixed beverage establishment which is  
16 wholly owned by the same licensee. Notice of such a transfer shall  
17 be given in writing to the Oklahoma Tax Commission and the ABLE  
18 Commission within three (3) business days of the transfer. The  
19 notice shall clearly show the quantity, brand and size of every  
20 transferred bottle or case.

21 V. A sacramental wine supplier license shall authorize the  
22 holder thereof: To sell, ship or deliver sacramental wine to any  
23 religious corporation or society of this state holding a valid  
24 exemption from taxation issued pursuant to Section 501(a) of the

1 Internal Revenue Code, 1986, and listed as an exempt organization in  
2 Section 501(c)(3) of the Internal Revenue Code, 1986, of the United  
3 States, as amended.

4 W. A beer and wine license shall authorize the holder thereof:  
5 To purchase beer and wine in retail containers from the holder of a  
6 wholesaler or Class B wholesaler license or as specifically provided  
7 by law and to sell, offer for sale and possess beer and wine for on-  
8 premises consumption only; provided, the holder of a beer and wine  
9 license issued for an establishment which is also a restaurant may  
10 purchase wine from a winemaker who is permitted and has elected to  
11 self-distribute as provided in Section 3 of Article XXVIII of the  
12 Oklahoma Constitution.

13 Sales and service of beer and wine by holders of beer and wine  
14 licenses shall be limited to the licensed premises of the licensee  
15 unless the holder of the beer and wine license also obtains a  
16 caterer license. A beer and wine license shall only be issued in  
17 counties of this state where the sale of alcoholic beverages by the  
18 individual drink for on-premises consumption has been authorized. A  
19 separate license shall be required for each place of business. ~~No~~  
20 ~~beer and wine license shall be issued for any place of business~~  
21 ~~functioning as a motion picture theater, as defined by Section 506~~  
22 ~~of this title.~~ No spirits shall be stored, possessed or consumed on  
23 the licensed premises of a beer and wine licensee.

24

1 X. A charitable auction or charitable alcoholic beverage event  
2 license may be issued to a charitable organization exempt from  
3 taxation under Section 501(c)(3), (4), (5), (6), (7), (8), (9),  
4 (10), or (19) of the United States Internal Revenue Code. The  
5 charitable alcoholic beverage event license shall authorize the  
6 holder thereof to conduct a wine, spirit and/or beer event which may  
7 consist of one or more of a wine, spirit and/or beer tasting event,  
8 a wine, spirit and/or beer dinner event or a wine, spirit and/or  
9 beer auction, which may be either a live auction conducted by an  
10 auctioneer or a silent auction for which:

11 1. Bid sheets are accepted from interested bidders at the  
12 event;

13 2. The holders of tickets are allowed to bid online for a  
14 period not exceeding thirty (30) days prior to the event; or

15 3. Both bid sheets are accepted at the event and online bids  
16 are accepted pursuant to paragraph 2 of this subsection.

17 A charitable alcoholic beverage event shall be conducted solely  
18 to raise funds for charitable purposes. A charitable alcoholic  
19 beverage license will allow the event attendees access to tastings,  
20 samples, dinners, and alcoholic beverages as parts of their entrance  
21 fee or ticket price. Wine, spirits and/or beer used in, served, or  
22 consumed at a charitable alcoholic beverage event may be purchased  
23 by the charitable organization or donated by any person or entity.  
24 The charitable alcoholic beverage event license shall be issued for

1 a period not exceeding four (4) days. Only eight such licenses may  
2 be issued to an organization in any twelve-month period. The  
3 charitable organization holding a charitable alcoholic beverage  
4 event license shall not be required to obtain a special event  
5 license. Charitable auction and charitable alcoholic beverage event  
6 license holders may also utilize a licensed caterer to provide  
7 additional alcohol services at the event and on the premises. The  
8 charitable auction license shall authorize the holder thereof to  
9 auction wine, spirits, and/or beer purchased from a retail package  
10 store or received as a gift from an individual if the auction is  
11 conducted to raise funds for charitable purposes. The charitable  
12 auction license shall be issued for a period not to exceed two (2)  
13 days. Only four such licenses shall be issued to an organization in  
14 any twelve-month period. The maximum amount of wine, spirits,  
15 and/or beer auctioned pursuant to the charitable auction license  
16 shall not exceed fifty (50) gallons. All wine, beer, and spirits  
17 auctioned pursuant to the charitable auction license shall be  
18 registered and all fees and taxes shall be paid in accordance with  
19 the Oklahoma Alcoholic Beverage Control Act.

20 Y. A mixed beverage/caterer combination license shall authorize  
21 the holder thereof: To purchase or sell mixed beverages as  
22 specifically provided by law for the holder of a mixed beverage  
23 license or a caterer license. All provisions of the Oklahoma  
24 Alcoholic Beverage Control Act applicable to mixed beverage licenses

1 or caterer licenses, or the holders thereof, shall also be  
2 applicable to mixed beverage/caterer combination licenses or the  
3 holders thereof, except where specifically otherwise provided. A  
4 mixed beverage/caterer combination license shall only be issued in  
5 counties of this state where the sale of alcoholic beverages by the  
6 individual drink for on-premises consumption has been authorized. A  
7 separate license shall be required for each place of business.

8 A licensed mixed beverage/caterer licensee shall be authorized  
9 to sell mixed beverages for on-premises consumption incidental to  
10 the distribution of food at temporary private functions, at  
11 temporary public events that are licensed and approved by the ABLE  
12 Commission, and on the premises of a mixed beverage licensee whose  
13 main purpose is the hosting of live art presentations and is not  
14 open to the public more than one hundred twenty (120) days per year.

15 Z. A small farm winery license shall authorize the holder  
16 thereof: To manufacture and bottle wines produced by that small  
17 farm winery. In addition, a small farm winery license authorizes  
18 the holder of that permit to bottle and sell wines produced by  
19 another small farm winery. In order for a small farm winery to  
20 bottle and sell another small farm winery's products, both the  
21 selling winery and the buying winery shall be small farm winery  
22 permit holders. A small farm wine may display the trademarked  
23 "Oklahoma Grown" sticker available from the Oklahoma Grape Industry  
24 Council.

1 AA. In the event any portion of this section is declared  
2 invalid for any reason, the invalid portion shall be severed and the  
3 rest and remainder of the section shall be saved and given full  
4 force and application.

5 BB. Except as provided in Sections 554.1 and 554.2 of this  
6 title with respect to cities, towns and counties, and except as may  
7 be provided under Title 68 of the Oklahoma Statutes with respect to  
8 the Oklahoma Tax Commission, no license or permit other than  
9 licenses as provided under the Oklahoma Alcoholic Beverage Control  
10 Act shall be required of any licensee by any agency, instrumentality  
11 or political subdivision of this state to engage in any activity  
12 covered by the Oklahoma Alcoholic Beverage Control Act anywhere  
13 within the State of Oklahoma and no agency, instrumentality or  
14 political subdivision of this state shall interfere with the ABLE  
15 Commission's regulation of, or a wholesaler's performance of, the  
16 sale, distribution, possession, handling or marketing of alcoholic  
17 beverages on any premises of any licensee as defined in Section 506  
18 of this title.

19 SECTION 5. AMENDATORY Section 3, Chapter 366, O.S.L.  
20 2016 (37A O.S. Supp. 2016, Section 1-103), is amended to read as  
21 follows:

22 Section 1-103. As used in the Oklahoma Alcoholic Beverage  
23 Control Act:

24

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

3           2. "Alcohol" means and includes hydrated oxide of ethyl, ethyl  
4 alcohol, ethanol or spirits of wine, from whatever source or by  
5 whatever process produced. It does not include wood alcohol or  
6 alcohol which has been denatured or produced as denatured in  
7 accordance with Acts of Congress and regulations promulgated  
8 thereunder;

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

13           4. "Applicant" means any individual, legal or commercial  
14 business entity, or any individual involved in any legal or  
15 commercial business entity allowed to hold any license issued in  
16 accordance with the Oklahoma Alcoholic Beverage Control Act;

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

24

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

3       7. "Beer distributor" means and includes any person licensed to  
4 distribute beer for retail sale in the state, but does not include a  
5 holder of a small brewer self-distribution license or brewpub self-  
6 distribution license. The term "distributor", as used in this act,  
7 shall be construed to refer to a beer distributor;

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

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

17       10. "Brand extension" means:

18           a. after the effective date of this act, any brand of  
19 beer introduced by a manufacturer in this state which  
20 either:

21               (1) incorporates all or a substantial part of the  
22                       unique features of a preexisting brand of the  
23                       same licensed manufacturer, or

24

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

3 b. any brand of beer that a manufacturer, the majority of  
4 whose total volume of all brands of beer distributed  
5 in this state by such manufacturer on January 1, 2016,  
6 was distributed as low-point beer, desires to sell,  
7 introduces, begins selling or theretofore has sold and  
8 desires to continue selling a strong beer in this  
9 state which either:

10 (1) incorporates or incorporated all or a substantial  
11 part of the unique features of a preexisting low-  
12 point beer brand of the same licensed  
13 manufacturer, or

14 (2) relies or relied to a significant extent on the  
15 goodwill associated with a preexisting low-point  
16 beer brand;

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

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

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

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

10           15. "Convicted" and "conviction" mean and include a finding of  
11 guilt resulting from a plea of guilty or nolo contendere, the  
12 decision of a court or magistrate or the verdict of a jury,  
13 irrespective of the pronouncement of judgment or the suspension  
14 thereof;

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

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

24

1 18. "Distributor agreement" means the written agreement between  
2 the distributor and manufacturer as set forth in Section ~~78~~ 3-108 of  
3 this ~~act~~ title;

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

6 20. "Dual\_strength beer" means a brand of beer that,  
7 immediately prior to the effective date of this act, was being sold  
8 and distributed in this state:

9 a. as a low-point beer pursuant to the Low-Point Beer  
10 Distribution Act in effect immediately prior to the  
11 effective date of this act, and

12 b. as strong beer pursuant to the Alcoholic Beverage  
13 Control Act in effect immediately prior to the  
14 effective date of this act.

15 Dual\_strength beer does not include a brand of beer that arose  
16 as a result of a brand extension as defined in this section;

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

23 22. "Good cause" means:  
24

- 1           a.    failure by the distributor to comply with the material  
2                    and reasonable provisions of a written agreement or  
3                    understanding with the manufacturer, or  
4           b.    failure by the distributor to comply with the duty of  
5                    good faith;

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

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

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

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

1       27. "Licensee" means any person holding a license under the  
2 Oklahoma Alcoholic Beverage Control Act, and any agent, servant or  
3 employee of such licensee while in the performance of any act or  
4 duty in connection with the licensed business or on the licensed  
5 premises;

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

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

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

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

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

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

7 33. "Mixed beverage cooler" means any beverage, by whatever  
8 name designated, consisting of an alcoholic beverage and fruit or  
9 vegetable juice, fruit or vegetable flavorings, dairy products or  
10 carbonated water containing more than one-half of one percent (1/2  
11 of 1%) of alcohol measured by volume but not more than seven percent  
12 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is  
13 packaged in a container not larger than three hundred seventy-five  
14 (375) milliliters. Such term shall include but not be limited to  
15 the beverage popularly known as a "wine cooler";

16 34. "Mixed beverages" means one or more servings of a beverage  
17 composed in whole or part of an alcoholic beverage in a sealed or  
18 unsealed container of any legal size for consumption on the premises  
19 where served or sold by the holder of a mixed beverage, beer and  
20 wine, caterer, public event, charitable event or special event  
21 license;

22 35. "Motion picture theater" means ~~a place~~ an establishment  
23 which is licensed by Section 2-110 of this title to sell alcoholic  
24 beverages by the individual drink and where motion pictures are

1 exhibited, and to which the general public is admitted, ~~but does not~~  
2 ~~include a place where meals, as defined by this section, are served,~~  
3 ~~if only persons over twenty-one (21) years of age are admitted;~~

4 36. "Nonresident seller" means any person licensed pursuant to  
5 Section ~~47~~ 2-135 of this ~~act~~ title;

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

9 38. "Occupation" as used in connection with "occupation tax"  
10 means the sites occupied as the places of business of the  
11 manufacturers, wholesalers, beer distributors, retailers, mixed  
12 beverage licensees, on-premises beer and wine licensees, bottle  
13 clubs, caterers, public event and special event licensees;

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

16 40. "Package store" means any sole proprietor or partnership  
17 that qualifies to sell wine, beer and/or spirits for off-premise  
18 consumption and that is not a grocery store, convenience store or  
19 drug store, or other retail outlet that is not permitted to sell  
20 wine or beer for off-premise consumption;

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

23 42. "Person" means an individual, any type of partnership,  
24 corporation, association, limited liability company or any

1 individual involved in the legal structure of any such business  
2 entity;

3 43. "Premises" means the grounds and all buildings and  
4 appurtenances pertaining to the grounds including any adjacent  
5 premises if under the direct or indirect control of the licensee and  
6 the rooms and equipment under the control of the licensee and used  
7 in connection with or in furtherance of the business covered by a  
8 license. Provided that the ABLE Commission shall have the authority  
9 to designate areas to be excluded from the licensed premises solely  
10 for the purpose of:

- 11 a. allowing the presence and consumption of alcoholic  
12 beverages by private parties which are closed to the  
13 general public, or
- 14 b. allowing the services of a caterer serving alcoholic  
15 beverages provided by a private party.

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

19 44. "Private event" means a social gathering or event attended  
20 by invited guests who share a common cause, membership, business or  
21 task and have a prior established relationship. For purposes of  
22 this definition, advertisement for general public attendance or  
23 sales of tickets to the general public shall not constitute a  
24 private event;

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

3       46. "Rectifier" means any person who rectifies, purifies or  
4 refines spirits or wines by any process (other than by original and  
5 continuous distillation, or original and continuous processing, from  
6 mash, wort, wash or other substance, through continuous closed  
7 vessels and pipes, until the production thereof is complete), and  
8 any person who, without rectifying, purifying or refining spirits,  
9 shall by mixing (except for immediate consumption on the premises  
10 where mixed) such spirits, wine or other liquor with any material,  
11 manufactures any spurious, imitation or compound liquors for sale,  
12 under the name of whiskey, brandy, rum, gin, wine, spirits, cordials  
13 or any other name;

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

16       48. "Restaurant" means an establishment that is licensed to  
17 sell alcoholic beverages by the individual drink for on-premises  
18 consumption and where food is prepared and sold for immediate  
19 consumption on the premises;

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

23       50. "Retailer" means a package store, grocery store,  
24 convenience store or drug store licensed to sell alcoholic beverages

1 for off-premise consumption pursuant to a Retail Spirits License,  
2 Retail Wine License or Retail Beer License;

3 51. "Sale" means any transfer, exchange or barter in any manner  
4 or by any means whatsoever, and includes and means all sales made by  
5 any person, whether as principal, proprietor or as an agent, servant  
6 or employee. The term "sale" is also declared to be and include the  
7 use or consumption in this state of any alcoholic beverage obtained  
8 within or imported from without this state, upon which the excise  
9 tax levied by the Oklahoma Alcoholic Beverage Control Act has not  
10 been paid or exempted;

11 52. "Short\_order food" means food other than full meals  
12 including but not limited to sandwiches, soups and salads. Provided  
13 that popcorn, chips and other similar snack food shall not be  
14 considered "short\_order food";

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

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

21 55. "Small farm winery" means a wine-making establishment that  
22 does not annually produce for sale more than fifteen thousand  
23 (15,000) gallons of wine as reported on the United States Department  
24

1 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of  
2 Wine Premises Operations (TTB Form 5120.17);

3 56. "Sparkling wine" means champagne or any artificially  
4 carbonated wine;

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

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

16 59. "Strong beer" means beer which, prior to the effective date  
17 of this act, was distributed pursuant to the Oklahoma Alcoholic  
18 Beverage Control Act, Section 501 et seq. of Title 37 of the  
19 Oklahoma Statutes;

20 60. "Successor manufacturer" means a primary source of supply,  
21 a brewer or an importer that acquires rights to a beer brand from a  
22 predecessor manufacturer;

23 61. "Tax Commission" means the Oklahoma Tax Commission;

24

1       62. "Territory" means a geographic region with a specified  
2 boundary;

3       63. "Wine and spirits wholesaler" or "wine and spirits  
4 distributor" means and includes any sole proprietorship or  
5 partnership licensed to distribute wine and spirits in the state.  
6 The term "wholesaler", as used in this act, shall be construed to  
7 refer to a wine and spirits wholesaler; and

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

15       Words in the plural include the singular, and vice versa, and  
16 words imparting the masculine gender include the feminine, as well  
17 as persons and licensees as defined in this section.

18       SECTION 6.       REPEALER       37 O.S. 2011, Section 163.2, as  
19 amended by Section 1 of this act, is hereby repealed.

20       SECTION 7.       REPEALER       37 O.S. 2011, Section 163.25, as  
21 amended by Section 2 of this act, is hereby repealed.

22       SECTION 8.       REPEALER       37 O.S. 2011, Section 506, as last  
23 amended by Section 3 of this act, is hereby repealed.

24

1 SECTION 9. REPEALER 37 O.S. 2011, Section 521, as last  
2 amended by Section 4 of this act, is hereby repealed.

3 SECTION 10. Sections 5, 6, 7, 8 and 9 of this act shall become  
4 effective October 1, 2018.

5 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM  
6 April 12, 2017 - DO PASS AS AMENDED  
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