

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 608 By: David of the Senate
3 and
4 Kannady of the House
5

6 [alcoholic beverages - direct wine shipper's permit
7 - providing for foreign country shipper permit -
8 ~~effective date -~~ emergency]
9

10 AUTHOR: Add the following House Coauthor: McDugle

11 AMENDMENT NO. 1. Delete the stricken title, enacting clause and
12 entire bill and replace with:

13 "An Act relating to alcoholic beverages; amending
14 Section 3, Chapter 366, O.S.L. 2016, as last amended
15 by Section 13, Chapter 304, O.S.L. 2018 (37A O.S.
16 Supp. 2018, Section 1-103), which relates to
17 definitions; modifying certain definition; defining
18 "top brand"; providing method for determining top
19 brands; setting certain sales requirements for top-
20 brand manufacturers; requiring certain wholesalers
21 to comply with line-item pricing provisions;
22 requiring certain written consent before amending
23 price; and providing for codification.
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21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

22 SECTION 1. AMENDATORY Section 3, Chapter 366, O.S.L.
23 2016, as last amended by Section 13, Chapter 304, O.S.L. 2018 (37A
24 O.S. Supp. 2018, Section 1-103), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

19 10. "Brand extension" means:

20 a. after the effective date of this act, any brand of
21 beer or cider introduced by a manufacturer in this
22 state which either:
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1 (1) incorporates all or a substantial part of the
2 unique features of a preexisting brand of the
3 same licensed manufacturer, or

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

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

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

17 (2) relies or relied to a significant extent on the
18 goodwill associated with a preexisting low-point
19 beer brand;

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

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

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

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

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

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

20 17. "Distiller" means any person who produces spirits from any
21 source or substance, or any person who brews or makes mash, wort or
22 wash, fit for distillation or for the production of spirits (except
23 a person making or using such material in the authorized production
24 of wine or beer, or the production of vinegar by fermentation), or

1 any person who by any process separates alcoholic spirits from any
2 fermented substance, or any person who, making or keeping mash, wort
3 or wash, has also in his or her possession or use a still;

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

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

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

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

15 b. as strong beer pursuant to the Alcoholic Beverage
16 Control Act in effect immediately prior to the
17 effective date of this act,

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

21 21. "Fair market value" means the value in the subject
22 territory covered by the written agreement with the distributor or
23 wholesaler that would be determined in an arm's length transaction
24 entered into without duress or threat of termination of the

1 distributor's or wholesaler's rights and shall include all elements
2 of value, including goodwill and going-concern value;

3 22. "Good cause" means:

4 a. failure by the distributor to comply with the material
5 and reasonable provisions of a written agreement or
6 understanding with the manufacturer, or

7 b. failure by the distributor to comply with the duty of
8 good faith;

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

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

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

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

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

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

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

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

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

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

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

9 33. "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 34. "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;

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

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

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

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

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

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

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

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1 42. "Person" means an individual, any type of partnership,
2 corporation, association, limited liability company or any
3 individual involved in the legal structure of any such business
4 entity;

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

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

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

21 44. "Private event" means a social gathering or event attended
22 by invited guests who share a common cause, membership, business or
23 task and have a prior established relationship. For purposes of
24 this definition, advertisement for general public attendance or

1 sales of tickets to the general public shall not constitute a
2 private event;

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

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

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

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

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

1 50. "Retailer" means a package store, grocery store,
2 convenience store or drug store licensed to sell alcoholic beverages
3 for off-premise consumption pursuant to a Retail Spirits License,
4 Retail Wine License or Retail Beer License;

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

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

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

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

23 55. "Small farm winery" means a wine-making establishment that
24 does not annually produce for sale more than fifteen thousand

1 (15,000) gallons of wine as reported on the United States Department
2 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of
3 Wine Premises Operations (TTB Form 5120.17);

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

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

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

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

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

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

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 2. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 3-116.4 of Title 37A, unless
20 there is created a duplication in numbering, reads as follows:

21 Any wine or spirit product that constitutes a top brand, as
22 defined in this section, shall be offered by the manufacturer for
23 sale to every licensed wine and spirits wholesaler who desires to
24 purchase the same on the same price basis and without discrimination

1 or inducements. "Top brand" shall mean those brands constituting
2 the top twenty-five brands in total sales of spirits and of wine by
3 all wholesalers during the past twelve-month period, according to
4 the records of the ABLE Commission as revised by the ABLE Commission
5 quarterly. In order to allow the ABLE Commission to determine the
6 top twenty-five brands of spirits and of wine, all wholesalers must
7 submit to the ABLE Commission every sixty (60) days a sworn
8 affidavit listing their top thirty brands of spirits and of wine in
9 sales for the previous sixty (60) days, excluding sales to
10 wholesalers. Wholesalers who choose to purchase any top-brand wine
11 or spirits product shall comply with the line-item price posting
12 requirements of Section 3-116.2 of Title 37A of the Oklahoma
13 Statutes. Any pricing amendment to which the ABLE Commission
14 provides its written consent in accordance with Section 3-116.3 of
15 Title 37A of the Oklahoma Statutes shall become effective on the
16 first business day of the following week."

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1 Passed the House of Representatives the 23rd day of April, 2019.

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4 Presiding Officer of the House of
5 Representatives

6 Passed the Senate the ____ day of _____, 2019.

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9 Presiding Officer of the Senate

1 ENGROSSED SENATE
2 BILL NO. 608

By: David of the Senate

3 and

4 Kannady of the House

5
6 [alcoholic beverages - direct wine shipper's permit
7 - providing for foreign country shipper permit -
8 ~~effective date -~~ emergency]

9
10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

11 SECTION 3. AMENDATORY Section 76, Chapter 366, O.S.L.
12 2016, as last amended by Section 3, Chapter 113, O.S.L. 2018 (37A
13 O.S. Supp. 2018, Section 3-106), is amended to read as follows:

14 Section 3-106. A. A Direct Wine Shipper's Permit may be issued
15 by the Oklahoma ABLE Commission to a winery licensed in this or any
16 other state within the United States or a foreign country as a wine
17 producer. A Direct Wine Shipper's Permit allows a winery to ship up
18 to six nine-liter cases of wine annually directly to an Oklahoma
19 resident who is twenty-one (21) years of age or older for such
20 resident's personal use and not for resale. No resident shall be
21 permitted to purchase more than thirty nine-liter cases of wine per
22 year under the provisions of this section.

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1 B. The ABLE Commission shall promulgate rules governing the
2 application, issuance and renewal of Direct Wine Shipper's Permits,
3 which shall include but not be limited to:

4 1. Proof of current licensure in this or any other state or a
5 foreign country as a wine producer;

6 2. Payment of a registration fee of Three Hundred Dollars
7 (\$300.00) for original permits and One Hundred Fifty Dollars
8 (\$150.00) for renewal permits; and

9 3. Any other documentation that the ABLE Commission believes is
10 reasonably necessary to verify the identity and physical location of
11 the winery.

12 C. With regard to direct wine shipments permitted by this
13 section, Direct Wine Shipper permit holders:

14 1. Shall not ship more than six nine-liter cases of wine
15 annually to any person for his or her personal use;

16 2. Shall not ship wine intended for resale;

17 3. Shall ensure that all packages containing wine shipped
18 directly to a resident in this state are conspicuously labeled with
19 the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER
20 REQUIRED FOR DELIVERY" or are conspicuously labeled with alternative
21 wording preapproved by the ABLE Commission;

22 4. Shall require the transporter or common carrier that
23 delivers the wine to obtain the signature of a person twenty-one
24 (21) years of age or older at the delivery address at the time of

1 delivery. At the expense of the Direct Wine Shipper, the Direct
2 Wine Shipper shall receive a delivery confirmation from the express
3 company, common carrier or contract carrier indicating the location
4 of delivery and the name and signature of the individual who
5 accepted the delivery. The ABLE Commission shall design and create
6 a label or approve a label that must be affixed to the shipping
7 container by the licensee;

8 5. Shall report to the ABLE Commission annually, by a method
9 prescribed by the ABLE Commission, the total amount of wine shipped
10 into the state the preceding calendar year;

11 6. Shall annually pay to the Oklahoma Tax Commission all
12 applicable taxes due on sales authorized by this section to Oklahoma
13 residents in the preceding calendar year. The amount of such taxes
14 shall be calculated as if the sale were in Oklahoma at the location
15 where delivery is made. Upon request, permit holders shall permit
16 the Tax Commission to perform an audit of the permit holder's
17 records in order to assure compliance;

18 7. Shall be deemed to have consented to the jurisdiction of any
19 agency or court of the State of Oklahoma tasked with the enforcement
20 of or adjudication of controversies related to this section and any
21 related laws or rules; and

22 8. Shall require the consumer to verify, by electronic means or
23 otherwise, that the consumer is at least twenty-one (21) years of
24 age.

1 D. Every express company, common carrier, contract carrier and
2 every firm or corporation that shall bring, carry or transport wine
3 for delivery to any person in the state, except wine or spirit
4 wholesalers or beer distributors, shall prepare and file quarterly
5 with the ABLE Commission a report, which shall not be subject to the
6 Oklahoma Open Records Act, of known wine shipments containing:

7 1. The name of the company, carrier, person, firm or
8 corporation making the report;

9 2. The period of time covered by the report;

10 3. The name and business address of the consignor shipping the
11 wine;

12 4. The weight of the packages shipped;

13 5. The unique tracking number of the delivery; and

14 6. The date of delivery.

15 E. The provisions of this section do not apply to a motor
16 carrier or freight forwarder as defined in Section 13102 of Title 49
17 of the United States Code or to an air carrier as defined in Section
18 40102 of Title 49 of the United States Code.

19 ~~SECTION 4. This act shall become effective July 1, 2019.~~

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

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