

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 783

By: Holt

4
5
6 AS INTRODUCED

7 An Act relating to alcoholic beverages; amending 37
8 O.S. 2011, Sections 163.2, 163.25, 506, as last
9 amended by Section 1, Chapter 275, O.S.L. 2015, 521,
10 as last amended by Section 4, Chapter 298, O.S.L.
11 2014 (37 O.S. Supp. 2016, Sections 506 and 521) and
12 Section 3, Chapter 366, O.S.L. 2016 (37A O.S. Supp.
13 2016, Section 1-103), which relate to definitions and
14 motion picture theaters; modifying language;
15 modifying definitions; repealing 37 O.S. 2011,
16 Section 163.2, as last amended by Section 1 of this
17 act, which relate to definitions; repealing 37 O.S.
18 2011, Section 163.25, as amended by Section 2 of this
19 act, which relates to motion picture theaters;
20 repealing 37 O.S. 2011, Section 506, as last amended
21 by Section 1, Chapter 275, O.S.L. 2015 (37 O.S. Supp.
22 2016, Section 506) and Section 3 of this act, which
23 relates to definitions; repealing 37 O.S. 2011,
24 Section 521, as last amended by Section 4, Chapter
298, O.S.L. 2014 (37 O.S. Supp. 2016, Section 521)
and Section 4 of this act, which relates to licenses;
and providing an effective date.

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

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

1 Section 163.2. In the administration of Section 163.1 et seq.
2 of this title, the following words and phrases are given the
3 meanings respectively indicated:

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

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

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

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

19 5. "Retail dealer" means and includes any person who sells any
20 low-point beer, as defined herein, at retail for consumption or use,
21 and such definitions include state and county fair associations, and
22 special licenses may be issued for the sale of low-point beer, as
23 herein defined, by such associations, and to other persons for the
24 sale of such low-point beer at rodeos, picnics, or other organized

1 temporary assemblages of people. The term "retail dealer" also
2 includes railways for the sale of such beverages, and licenses may
3 be issued for each dining car or railway train, which railways and
4 dining cars shall pay the same license fees as regular retail
5 dealers;

6 6. "Sale" or "sales", for the purpose of the collection of the
7 taxes imposed by any law of the state upon low-point beer, as
8 defined herein, is hereby defined to mean and include all sales by
9 all wholesalers within this state, for money or any other valuable
10 consideration, to retail dealers for resale; and, also, the term
11 "sale" or "sales" taxable under Section 163.1 et seq. of this title
12 means and includes all sales from manufacturers or wholesalers from
13 outside this state, to retail dealers for resale to consumers or
14 otherwise. The term "sale" or "sales" shall also include sales from
15 manufacturers without the state to wholesalers located within the
16 state;

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

22 8. "Motion picture theater" means ~~a place where~~ an
23 establishment where low-point beer is sold and motion pictures are
24 exhibited, and to which the general public is admitted, ~~but does not~~

1 ~~include a place where meals, as defined by this section, are served,~~
2 ~~if only persons twenty-one (21) years of age or older are admitted;~~

3 9. "Existing wholesaler" means a wholesaler who distributes a
4 particular brand of low-point beer at the time a successor
5 manufacturer acquires rights to manufacture or import the particular
6 brand of low-point beer;

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

11 11. "Good cause" means:

12 a. failure by the wholesaler to comply with the
13 provisions of a written agreement or understanding
14 with the manufacturer, or

15 b. failure by the wholesaler to comply with the duty of
16 good faith;

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

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

23 14. "Successor wholesaler" means one or more wholesalers
24 designated by a successor manufacturer to replace the existing

1 wholesaler, for all or part of the existing wholesaler's territory,
2 in the distribution of the existing low-point beer brand or brands;
3 and

4 15. "On-premise consumption" shall include consumption within a
5 single building owned or operated by any agency, political
6 subdivision or public trust of this state, if the building or a part
7 thereof is defined as a common drinking area for consumption of low-
8 point beer by resolution of the governing body that owns or operates
9 the building.

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

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

18 SECTION 3. AMENDATORY 37 O.S. 2011, Section 506, as last
19 amended by Section 1, Chapter 275, O.S.L. 2015 (37 O.S. Supp. 2016,
20 Section 506), is amended to read as follows:

21 Section 506. When used in the Oklahoma Alcoholic Beverage
22 Control Act, the following words and phrases shall have the
23 following meaning:

24

1 1. "ABLE Commission" means the Alcoholic Beverage Laws
2 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, but
13 does not include low-point beer as that term is defined in Section
14 163.2 of this title;

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 containing more than three and
20 two-tenths percent (3.2%) of alcohol by weight and obtained by the
21 alcoholic fermentation of an infusion or decoction of barley, or
22 other grain, malt or similar products. "Beer" may or may not
23 contain hops or other vegetable products. "Beer" includes, among
24 other things, beer, ale, stout, lager beer, porter and other malt or

1 brewed liquors, but does not include sake, known as Japanese rice
2 wine;

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

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

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

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

17 10. "Director" means the Director of the Alcoholic Beverage
18 Laws Enforcement Commission under the supervision of the Commission;

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

1 fermented substance, or any person who, making or keeping mash,
2 wort, or wash, has also in his or her possession or use a still;

3 12. "Hotel" or "motel" shall mean an establishment which is
4 licensed to sell alcoholic beverages by the individual drink and
5 which contains guestroom accommodations with respect to which the
6 predominant relationship existing between the occupants thereof and
7 the owner or operator of the establishment is that of innkeeper and
8 guest. For purposes of this section, the existence of other legal
9 relationships as between some occupants and the owner or operator
10 thereof shall be immaterial;

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

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

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

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

24

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

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

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

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

15 21. "Mixed beverage cooler" means any beverage, by whatever
16 name designated, consisting of an alcoholic beverage and fruit or
17 vegetable juice, fruit or vegetable flavorings, dairy products or
18 carbonated water containing more than one-half of one percent (1/2
19 of 1%) of alcohol measured by volume but not more than seven percent
20 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is
21 packaged in a container not larger than three hundred seventy-five
22 (375) milliliters. Such term shall include, but not be limited to,
23 the beverage popularly known as a "wine cooler";

24

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

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

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

15 25. "Occupation" as used in connection with "occupation tax"
16 means the sites occupied as the places of business of the
17 manufacturers, wholesalers, Class B wholesalers, retailers, mixed
18 beverage licensees, beer and wine licensees, bottle clubs, caterers,
19 public event, and special event licensees;

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

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

24

1 28. "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 29. "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 30. "Public event" means any event that can be attended by the
22 general public;

23 31. "Private event" means a social gathering or event attended
24 by invited guests who share a common cause, membership, business or

1 task and have a prior established relationship. For purposes of
2 this definition, advertisement for general public attendance or
3 sales of tickets to the general public shall not constitute a
4 private event;

5 32. "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,
15 cordials, or any other name;

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

18 34. "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 35. "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 36. "Retailer" means the holder of a Package Store License;

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

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

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

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

22 41. "Sparkling wine" means champagne or any artificially
23 carbonated wine;

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

9 43. "Wholesaler" means and includes any person doing any such
10 acts or carrying on any such business or businesses that would
11 require such person to obtain a wholesaler's license or licenses
12 hereunder;

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

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

21 46. "Oklahoma winemaker" means a business premises in Oklahoma
22 licensed pursuant to the Oklahoma Alcoholic Beverage Control Act
23 wherein wine is produced by the licensee who must be a resident of
24 the state. The wine product fermented in the licensed premises

1 shall be of grapes, berries and other fruits and vegetables imported
2 into this state and processed herein or shall be of grapes, berries
3 and other fruits and vegetables grown in Oklahoma.

4 Words in the plural include the singular, and vice versa, and
5 words imparting the masculine gender include the feminine, as well
6 as persons and licensees as defined in this section.

7 SECTION 4. AMENDATORY 37 O.S. 2011, Section 521, as last
8 amended by Section 4, Chapter 298, O.S.L. 2014 (37 O.S. Supp. 2016,
9 Section 521), is amended to read as follows:

10 Section 521. A. A brewer license shall authorize the holder
11 thereof: To manufacture, bottle, package, and store beer on
12 licensed premises; to sell beer in this state to holders of Class B
13 wholesaler licenses and retail licenses and to sell beer out of this
14 state to qualified persons; to sell beer produced by the licensee to
15 consumers twenty-one (21) years of age or older on the premises of
16 the brewery; and to serve free samples of beer produced by the
17 licensee to visitors twenty-one (21) years of age or older. For
18 purposes of this section, no visitor may sample more than a total of
19 twelve (12) fluid ounces of beer per day. The brewer must restrict
20 the distribution and consumption of beer samples to an area within
21 the licensed premises designated by the brewer. A current floor
22 plan that includes the designated sampling area must be on file with
23 the Oklahoma Alcoholic Beverage Laws Enforcement (ABLE) Commission.
24 No visitor under twenty-one (21) years of age shall be permitted to

1 enter this designated sampling area when samples are being
2 distributed or consumed. Samples and sales may only be distributed
3 or consumed between 10:00 a.m. and 9:00 p.m. Samples and sales of
4 beer made or served by a brewery under this section shall not be
5 considered a "sale" of beer within the meaning of Article XXVIII of
6 the Oklahoma Constitution or Section 506 of this title; however,
7 such samples and sales of beer shall be considered beer removed or
8 withdrawn from the brewery for "use or consumption" within the
9 meaning of Section 542 of this title for excise tax determination
10 and reporting requirements.

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

18 C. A winemaker license shall authorize the holder thereof: To
19 manufacture (including such mixing, blending and cellar treatment as
20 authorized by federal law), bottle, package, and store on licensed
21 premises wine containing not more than twenty-four percent (24%)
22 alcohol by volume, provided the bottle or package sizes authorized
23 shall be limited to the capacities approved by the United States
24 Alcohol and Tobacco Tax and Trade Bureau; to sell wine in this state

1 to licensed wholesalers and manufacturers; to sell bottles of wine
2 produced at the winery from grapes and other fruits and berries
3 grown in this state, if available, to consumers on the premises of
4 the winery; to serve visitors on the licensed premises samples of
5 wine produced on the premises; to serve samples of wine produced at
6 the winery at festivals and trade shows; to sell wine produced at
7 the winery, in original sealed containers, at festivals and trade
8 shows; to sell wine out of this state to qualified persons; to
9 purchase from licensed winemakers, distillers and rectifiers in this
10 state, and to import into this state wine, brandy and fruit spirits
11 for use in manufacturing in accordance with federal laws and
12 regulations; provided, a winemaker either within or without this
13 state that annually produces no more than ten thousand (10,000)
14 gallons of wine may elect to sell and self-distribute the wine
15 produced by such winemaker directly to licensed retail package
16 stores and restaurants in this state; and provided further that:

17 1. Any such winemaker which elects to directly sell its wine to
18 package stores and restaurants shall not also use a licensed
19 wholesale distributor as a means of distribution, and shall be
20 required to sell its wines to every package store and restaurant
21 licensee who desires to purchase the same, on the same price basis
22 and without discrimination;

23 2. If a winemaker or winery sells directly to a retail package
24 store or restaurant, the winemaker shall transport the wine from the

1 winemaker's winery to the premises where the wine is to be delivered
2 only in vehicles owned or leased by the winemaker and not by common
3 or private contract carrier and shall obtain all necessary permits
4 as required by the Oklahoma Alcoholic Beverage Control Act; and

5 3. If the production volume limit applicable to winemakers is
6 ruled to be unconstitutional by a court of competent jurisdiction,
7 then no winemaker shall be permitted to directly sell its wine to
8 retail package stores or restaurants in this state.

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

19 E. A rectifier license shall authorize the holder thereof: To
20 rectify spirits and wines, bottle, package, and store same on the
21 licensed premises; to sell spirits and wines in this state to
22 licensed wholesalers and manufacturers only; to sell spirits and
23 wines out of this state to qualified persons; to purchase from
24 licensed manufacturers in this state; and to import into this state

1 for manufacturing purposes spirits and wines in accordance with
2 federal laws and regulations.

3 F. 1. A wholesaler license shall authorize the holder thereof:
4 To purchase and import into this state spirits and wines from
5 persons authorized to sell same who are the holders of a nonresident
6 seller license, and their agents who are the holders of
7 manufacturers agent licenses; to purchase spirits and wines from
8 licensed distillers, rectifiers and winemakers in this state; to
9 purchase spirits and wines from licensed wholesalers, to the extent
10 set forth in paragraphs 2 and 3 of this subsection; to sell in
11 retail containers in this state to retailers, mixed beverage,
12 caterer, special event, public event, hotel beverage or
13 airline/railroad beverage licensees, spirits and wines which have
14 been received and unloaded at the bonded warehouse facilities of the
15 wholesaler before such sale; to sell to licensed wholesalers, to the
16 extent set forth in paragraphs 2 and 3 of this subsection, spirits
17 and wines which have been received and unloaded at the bonded
18 warehouse facilities of the wholesaler before such sale; and to sell
19 spirits and wines out of this state to qualified persons. Provided,
20 however, sales of spirits and wine in containers with a capacity of
21 less than one-twentieth (1/20) gallon by a holder of a wholesaler
22 license shall be in full case lots and in the original unbroken
23 case. Wholesalers shall be authorized to place such signs outside
24

1 their place of business as are required by Acts of Congress and by
2 such laws and regulations promulgated under such Acts.

3 2. Wholesalers are prohibited from purchasing annually in
4 excess of fifteen percent (15%) of their total spirits inventory and
5 fifteen percent (15%) of their total wine inventory from one or more
6 wholesalers. Wholesalers are also prohibited from purchasing
7 annually in excess of fifteen percent (15%) of their inventory of
8 any individual brand of spirits or wine from one or more
9 wholesalers. The volume of spirits and wine and of each brand that
10 each wholesaler is permitted to purchase annually from other
11 wholesalers shall be calculated by the ABLE Commission by
12 multiplying fifteen percent (15%) by:

- 13 a. the total volume of spirits sales of the wholesaler,
14 by liter, from the previous calendar year, and
- 15 b. the total volume of wine sales of the wholesaler, by
16 liter, from the previous calendar year, and
- 17 c. the volume of sales of each brand of spirits or wine
18 of the wholesaler, by liter, from the previous
19 calendar year.

20 A wholesaler who did not post any sales of spirits, wine or of a
21 particular brand in the previous calendar year shall be deemed to
22 have sold the same volume of spirits, wine or of a particular brand
23 as the wholesaler posting the smallest volumes of sales in spirits,
24 wine or of a particular brand for that year for the purposes of this

1 paragraph. Notwithstanding the foregoing, wholesalers shall not
2 purchase any inventory in spirits or wine from any other wholesaler
3 until such time that the purchasing wholesaler possesses an
4 inventory valued at no less than Two Hundred Fifty Thousand Dollars
5 (\$250,000.00). Inventory valuation shall be based on the original
6 actual price paid by the purchasing wholesaler to the nonresident
7 seller for the inventory.

8 3. A wholesaler may sell spirits and wine to other wholesalers
9 or purchase spirits and wines from other wholesalers without
10 complying with paragraph 2 of this subsection in the case of the
11 sale, purchase, or other transfer or acquisition of the entire
12 business of a wholesaler, including the inventory of spirits and
13 wine.

14 4. A wholesaler license shall authorize the holder thereof to
15 operate a single bonded warehouse with a single central office
16 together with delivery facilities at a location in this state only
17 at the principal place of business for which the wholesaler license
18 was granted.

19 5. All licensed wholesalers shall register prices, purchase and
20 keep on hand or have on order a fifteen-day supply of all brands
21 constituting the top eighteen brands in total sales by all Oklahoma
22 wholesalers during the past twelve-month period, according to the
23 records of the ABLE Commission as revised by the ABLE Commission
24 quarterly; provided, however, that not more than three brands of any

1 particular nonresident seller shall be included in the top-brands
2 classification. All purchase orders for these top eighteen brands
3 must show an expected due delivery date. These purchase orders may
4 only be canceled with prior approval of the Director of the ABLE
5 Commission, unless a wholesaler shall have in its warehouse a
6 fifteen-day supply of merchandise on such purchase order.

7 In order to allow the ABLE Commission to determine the top
8 eighteen brands, wholesalers must submit to the ABLE Commission
9 every sixty (60) days a sworn affidavit listing their top twenty-
10 five brands in sales for the previous sixty (60) days, excluding
11 sales to wholesalers. Such affidavits shall be submitted in
12 conjunction with the original price postings of wholesalers.

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

1 calendar year and who reported the lowest volume of sales of wine
2 and spirits, in liters, of any wholesaler having been in business
3 for such period.

4 G. A Class B wholesaler license shall authorize the holder
5 thereof: To purchase and import into this state beer from persons
6 authorized to sell same who are the holders of nonresident seller
7 licenses, and their agents who are the holders of manufacturers
8 agent licenses; to purchase beer from licensed brewers and Class B
9 wholesalers in this state; to sell in retail containers to
10 retailers, mixed beverage, caterer, special event, public event,
11 hotel beverage, and airline/railroad beverage licensees in this
12 state, beer which has been unloaded and stored at the holder's self-
13 owned or leased and self-operated warehouse facilities for a period
14 of at least twenty-four (24) hours before such sale; and to sell
15 beer in this state to Class B wholesalers and out of this state to
16 qualified persons, including federal instrumentalities and voluntary
17 associations of military personnel on federal enclaves in this state
18 over which this state has ceded jurisdiction.

19 H. A package store license shall authorize the holder thereof:
20 To purchase alcohol, spirits, beer, and wine in retail containers
21 from the holder of a brewer, wholesaler or Class B wholesaler
22 license and to purchase wine from a winemaker who is permitted and
23 has elected to self-distribute as provided in Section 3 of Article
24 XXVIII of the Oklahoma Constitution and to sell same on the licensed

1 premises in such containers to consumers for off-premises
2 consumption only and not for resale; provided, wine, beer, and
3 spirits may be sold to charitable organizations that are holders of
4 charitable alcoholic beverage auction or charitable alcoholic
5 beverage event licenses. All alcoholic beverages that are sold by a
6 package store are to be sold at ordinary room temperature.

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

16 Sales and service of mixed beverages by holders of mixed
17 beverage licenses shall be limited to the licensed premises of the
18 licensee unless the holder of the mixed beverage license also
19 obtains a caterer license or a mixed beverage/caterer combination
20 license. A mixed beverage license shall only be issued in counties
21 of this state where the sale of alcoholic beverages by the
22 individual drink for on-premises consumption has been authorized. A
23 separate license ~~shall~~ may be required for each place of business.
24 ~~No~~ A mixed beverage license shall be issued for any place of

1 business functioning as a motion picture theater, as defined by
2 Section 506 of this title. A mixed beverage licensee whose main
3 purpose is hosting live performance art presentations may utilize
4 the services of a licensed caterer for its alcoholic beverage
5 service as long as it is not open to the public more than one
6 hundred twenty (120) days per year.

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

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

24

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

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

20 2. A quarterly special event license shall authorize the holder
21 thereof: To sell and distribute mixed beverages for consumption on
22 the premises for which the license has been issued for up to three
23 events to be held over a period not to exceed three (3) months. For
24 purposes of this paragraph, an event shall not exceed a period of

1 ten (10) consecutive days. A quarterly special event license shall
2 only be issued in counties of this state where the sale of alcoholic
3 beverages by the individual drink for on-premises consumption has
4 been authorized. The holder of a quarterly special event license
5 shall provide written notice to the ABLE Commission of each special
6 event not less than ten (10) days before the event is held.

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

1 licensed caterer to provide and distribute the alcoholic beverages
2 at their events. When the applicant chooses to utilize the services
3 of a licensed caterer, the applicant shall declare upon application
4 which licensed caterer will be used. The licensed caterer shall be
5 responsible for payment of all applicable mixed beverage taxes
6 through the existing Mixed Beverage Tax Permit issued to his or her
7 business by the Oklahoma Tax Commission.

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

1 application which licensed caterer will be used. The licensed
2 caterer shall be responsible for payment of all applicable mixed
3 beverage taxes through the existing Mixed Beverage Tax Permit issued
4 to his or her business by the Oklahoma Tax Commission.

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

17 N. An airline/railroad beverage license shall authorize the
18 holder thereof: To sell or serve alcoholic beverages in or from any
19 size container on a commercial passenger airplane or railroad
20 operated in compliance with a valid license, permit or certificate
21 issued under the authority of the United States or this state, even
22 though the airplane or train, in the course of its travel, may cross
23 an area in which the sale of alcoholic beverages by the individual
24 drink is not authorized and to store alcoholic beverages in sealed

1 containers of any size at any airport or station regularly served by
2 the licensee, in accordance with rules promulgated by the Alcoholic
3 Beverage Laws Enforcement Commission. Alcoholic beverages purchased
4 by the holder of an airline/railroad license from the holder of a
5 wholesaler license shall be presumed to be purchased for consumption
6 outside the State of Oklahoma or in interstate commerce, and shall
7 be exempt from the excise tax provided for in Section 553 of this
8 title.

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

21 P. An employee license shall authorize the holder thereof: To
22 work in a package store, mixed beverage establishment, beer and wine
23 establishment, bottle club, public event or any establishment where
24 alcohol or alcoholic beverages are sold, mixed, or served. Persons

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

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

19 1. Manufacture of patent, proprietary, medicinal,
20 pharmaceutical, antiseptic, and toilet preparations;

21 2. Manufacture of extracts, syrups, condiments, and food
22 products; and

23 3. For use in scientific, chemical, mechanical, industrial, and
24 medicinal products and purposes.

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

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

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

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

23 S. A private carrier license may be issued to any carrier other
24 than a common carrier described in subsection Q of this section.

1 Such license shall authorize the holder thereof to transport
2 alcoholic beverages other than wine sold directly by a winemaker or
3 winery to a retail package store or restaurant into, within, or out
4 of this state under such terms, conditions, limitations, and
5 restrictions as the ABLE Commission may prescribe by order issuing
6 such license and by regulations. No carrier license or private
7 carrier license shall be required of licensed brewers, distillers,
8 winemakers, rectifiers, wholesalers, or Class B wholesalers, to
9 transport alcoholic beverages from the place of purchase or
10 acquisition to the licensed premises of such licensees and from such
11 licensed premises to the licensed premises of the purchaser in
12 vehicles owned or leased by such licensee when such transportation
13 is for a lawful purpose and not for hire.

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

24

1 T. A bonded warehouse license shall authorize the holder
2 thereof: To receive and store alcoholic beverages for the holders of
3 storage licenses on the licensed premises of the bonded warehouse
4 licensee. No goods, wares or merchandise other than alcoholic
5 beverages may be stored in the same bonded warehouse with alcoholic
6 beverages. The holder of a bonded warehouse license shall furnish
7 and file with the ABLE Commission a bond running to all bailers of
8 alcoholic beverages under proper storage licenses and their
9 assignees (including mortgagees or other bona fide lienholders)
10 conditioned upon faithful performance of the terms and conditions of
11 such bailments.

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

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

1 2. Any licensee who is the holder of a mixed beverage/caterer
2 combination license or the holder of a mixed beverage license and a
3 hotel beverage license who is issued a storage license shall store
4 all inventories of alcoholic beverages either on the premises of the
5 mixed beverage establishment or in the warehouse;

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

8 4. A storage license shall be required for a public event
9 licensee storing alcoholic beverages for use at a subsequent event;
10 and

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

1 V. A sacramental wine supplier license shall authorize the
2 holder thereof: To sell, ship or deliver sacramental wine to any
3 religious corporation or society of this state holding a valid
4 exemption from taxation issued pursuant to Section 501(a) of the
5 Internal Revenue Code, 1986, and listed as an exempt organization in
6 Section 501(c)(3) of the Internal Revenue Code, 1986, of the United
7 States, as amended.

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

17 Sales and service of beer and wine by holders of beer and wine
18 licenses shall be limited to the licensed premises of the licensee
19 unless the holder of the beer and wine license also obtains a
20 caterer license. A beer and wine license shall only be issued in
21 counties of this state where the sale of alcoholic beverages by the
22 individual drink for on-premises consumption has been authorized. A
23 separate license shall be required for each place of business. No
24 beer and wine license shall be issued for any place of business

1 functioning as a motion picture theater, as defined by Section 506
2 of this title. No spirits shall be stored, possessed or consumed on
3 the licensed premises of a beer and wine licensee.

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

14 1. Bid sheets are accepted from interested bidders at the
15 event;

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

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

20 A charitable alcoholic beverage event shall be conducted solely
21 to raise funds for charitable purposes. A charitable alcoholic
22 beverage license will allow the event attendees access to tastings,
23 samples, dinners, and alcoholic beverages as parts of their entrance
24 fee or ticket price. Wine, spirits and/or beer used in, served, or

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

23 Y. A mixed beverage/caterer combination license shall authorize
24 the holder thereof: To purchase or sell mixed beverages as

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

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

18 Z. A small farm winery license shall authorize the holder
19 thereof: To manufacture and bottle wines produced by that small
20 farm winery. In addition, a small farm winery license authorizes
21 the holder of that permit to bottle and sell wines produced by
22 another small farm winery. In order for a small farm winery to
23 bottle and sell another small farm winery's products, both the
24 selling winery and the buying winery shall be small farm winery

1 permit holders. A small farm wine may display the trademarked
2 "Oklahoma Grown" sticker available from the Oklahoma Grape Industry
3 Council.

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

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

22 SECTION 5. AMENDATORY Section 3, Chapter 366, O.S.L.
23 2016 (37A O.S. Supp. 2016, Section 1-103), is amended to read as
24 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
24

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 and to distinguish that
18 product from another beer;

19 10. "Brand extension" means:

20 a. after the effective date of this act, any brand of
21 beer introduced by a manufacturer in this state which
22 either:
23
24

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 78 of this
6 act;

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 the effective date of this act, was being sold
11 and distributed 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 Dual strength beer does not include a brand of beer that arose
19 as a result of a brand extension as defined in this section;

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

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,
24

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;

24

1 35. "Motion picture theater" means ~~a place~~ an establishment
2 which is licensed by Section 2-110 of this title to sell alcoholic
3 beverages by the individual drink and where motion pictures are
4 exhibited, and to which the general public is admitted, ~~but does not~~
5 ~~include a place where meals, as defined by this section, are served,~~
6 ~~if only persons over twenty-one (21) years of age are admitted;~~

7 36. "Nonresident seller" means any person licensed pursuant to
8 Section 47 of this act;

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

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

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

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

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

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

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

15 a. allowing the presence and consumption of alcoholic
16 beverages by private parties which are closed to the
17 general public, or

18 b. allowing the services of a caterer serving alcoholic
19 beverages provided by a private party.

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

23 44. "Private event" means a social gathering or event attended
24 by invited guests who share a common cause, membership, business or

1 task and have a prior established relationship. For purposes of
2 this definition, advertisement for general public attendance or
3 sales of tickets to the general public shall not constitute a
4 private event;

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

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

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

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

24

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

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

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

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

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

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

4 55. "Small farm winery" means a wine-making establishment that
5 does not annually produce for sale more than fifteen thousand
6 (15,000) gallons of wine as reported on the United States Department
7 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of
8 Wine Premises Operations (TTB Form 5120.17);

9 56. "Sparkling wine" means champagne or any artificially
10 carbonated wine;

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

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

22 59. "Strong beer" means beer which, prior to the effective date
23 of this act, was distributed pursuant to the Oklahoma Alcoholic
24

1 Beverage Control Act, Section 501 et seq. of Title 37 of the
2 Oklahoma Statutes;

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

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

7 62. "Territory" means a geographic region with a specified
8 boundary;

9 63. "Wine and spirits wholesaler" or "wine and spirits
10 distributor" means and includes any sole proprietorship or
11 partnership licensed to distribute wine and spirits in the state.
12 The term "wholesaler", as used in this act, shall be construed to
13 refer to a wine and spirits wholesaler; and

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

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

24

1 SECTION 6. REPEALER 37 O.S. 2011, Section 163.2, as
2 amended by Section 1 of this act, is hereby repealed.
3 SECTION 7. REPEALER 37 O.S. 2011, Section 163.25, as
4 amended by Section 2 of this act, is hereby repealed.
5 SECTION 8. REPEALER 37 O.S. 2011, Section 506, as last
6 amended by Section 1, Chapter 275, O.S.L. 2015 (37 O.S. Supp. 2016,
7 Section 506) and Section 3 of this act, is hereby repealed.
8 SECTION 9. REPEALER 37 O.S. 2011, Section 521, as last
9 amended by Section 4, Chapter 298, O.S.L. 2014 (37 O.S. Supp. 2016,
10 Section 521) and Section 4 of this act, is hereby repealed.
11 SECTION 10. Sections 5, 6, 7, 8 and 9 of this act shall become
12 effective October 1, 2018.

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