

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 936

By: Bice of the Senate

and

McEntire of the House

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10 COMMITTEE SUBSTITUTE

11 [beer breweries - brand label requirements -
12 charitable collaboration beer - taxation -
13 codification - effective date]

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

17 SECTION 1. AMENDATORY Section 135, Chapter 366, O.S.L.
18 2016, as amended by Section 23, Chapter 364, O.S.L. 2017 (37A O.S.
19 Supp. 2018, Section 5-132), is amended to read as follows:

20 Section 5-132. A. Except as provided in subsection D of this
21 section, no alcoholic beverage shall be labeled, offered or
22 advertised for sale in this state unless in accordance with rules
23 promulgated pursuant to the provisions of Section 5-130 of this
24 title and unless the brand label shall have been registered with and

1 approved by the ABLE Commission and the appropriate fee paid as
2 provided for in this section.

3 B. An application for registration of a brand label shall be
4 filed by and fees paid by the manufacturer or brewer of the brand if
5 the manufacturer or brewer is licensed by the ABLE Commission;
6 however, if the manufacturer is represented by a manufacturer's
7 agent, licensed nonresident seller, wine and spirits wholesaler or
8 beer distributor, then the manufacturer's agent, nonresident seller,
9 wine and spirits wholesaler or beer distributor shall submit each
10 label for each product the manufacturer offers for sale in this
11 state, along with payment of the brand registration fee; provided,
12 the manufacturer or brewer must fully reimburse the manufacturer's
13 agent, licensed nonresident seller, wine and spirits wholesaler or
14 beer distributor for the cost of the brand registration fee within
15 forty-five (45) days of the time the original brand registration fee
16 is paid. Cordials and wines which differ only as to age or vintage
17 year, as defined by such rules, shall be considered the same brand,
18 and those that differ as to type or class may be considered the same
19 brand by the ABLE Commission where consistent with the purposes of
20 this section.

21 C. The application for registration of a brand label shall be
22 filed on a form prescribed by the ABLE Commission, and shall contain
23 such information as the ABLE Commission shall require. Such
24 application shall be accompanied by a certified check, bank

1 officers' check or draft or money order in the amount of the annual
2 registration fee, or the properly prorated portion thereof
3 prescribed by this section.

4 D. 1. The annual fee for registration of any brand label for
5 spirits shall be Three Hundred Seventy-five Dollars (\$375.00). The
6 annual fee for registration of any brand label for beer shall be Two
7 Hundred Dollars (\$200.00). The annual fee for registration of any
8 brand label for wine made in the United States, or for registration
9 of any category of imported wine as defined by the Tax Commission,
10 shall be Two Hundred Dollars (\$200.00). Beer manufactured in this
11 state shall be exempt from brand label registration fees.

12 2. Each brand label registered and approved pursuant to this
13 section shall be valid for a term of up to one (1) year, expiring on
14 the June 30 next following registration, and may be renewed for
15 subsequent terms of one (1) year beginning on the July 1 following
16 the initial registration. Brand registration fees for labels
17 registered after July 1 may be prorated through the following June
18 30 on a quarterly basis. The brand registration fee shall not be
19 transferable.

20 E. If the ABLE Commission shall deny the application for
21 registration of a brand label, it shall return the registration fee
22 to the applicant, less twenty-five percent (25%) of such fee.

23 F. The ABLE Commission may at any time exempt any discontinued
24 brand from fee provisions of this section where a manufacturer or

1 wholesaler has an inventory of one hundred cases or less of liquor
2 or wine and five hundred cases or less of beer, and certifies to the
3 ABLE Commission in writing that such brand is being discontinued.

4 G. No private labels or control labels shall be approved for
5 sale in this state; except for charity collaboration beer as
6 authorized in Section 3 of this act.

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 5-132.1 of Title 37A, unless
9 there is created a duplication in numbering, reads as follows:

10 For purposes of an approved charitable collaboration beer as
11 authorized in Section 3 of this act, the production of wort and non-
12 retail packaged alcohol products necessary for the development,
13 mixing, fermentation, brewing, storage or retail packaging, in whole
14 or any part thereof, shall be allowed to be transferred-in-bond
15 without taxation between charitable collaborating breweries licensed
16 in this state; provided, all such transfers are made in accordance
17 with applicable federal law and regulations, and, provided further,
18 all such products containing alcohol shall bear the specific license
19 number for the approved charitable collaboration brewery. The
20 Oklahoma Tax Commission shall abate taxes upon notice and
21 application and only until the charitable collaboration beer is
22 packaged for purposes of distribution as may be divided, in whole or
23 any part thereof, between the licensed collaborating breweries.

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1 For purposes of this section, "transfer-in-bond" means the
2 movement of alcohol or products containing any percentage of alcohol
3 between licensed bonded brewery facilities without payment of tax.

4 The Tax Commission and the ABLE Commission may conduct such
5 inspections and audits necessary to maintain strict compliance and
6 record keeping during the development, mixing, fermentation,
7 brewing, storage or retail packaging, in whole or any part thereof,
8 of an approved charitable collaboration beer. The Tax Commission
9 shall promulgate rules and forms to exempt and allow transfer-in-
10 bond in accordance with the provisions of this act and ABLE
11 Commission rules.

12 SECTION 3. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 2-102.1 of Title 37A, unless
14 there is created a duplication in numbering, reads as follows:

15 Charitable Collaboration Brewer License.

16 A. A charitable collaboration brewer license shall authorize
17 the collaborating licensed brewers and holders thereof:

18 1. To formulate, manufacture, bottle, package and store the
19 charitable collaboration beer, or any part thereof, on the licensed
20 premises;

21 2. To sell the charitable collaboration beer in this state to
22 holders of beer distributor licenses;

1 3. To sell the charitable collaboration beer out of this state
2 to qualified persons for the sole purpose of fundraising for the
3 stated charitable purposes;

4 4. To sell the charitable collaboration beer in this state to
5 holders of retail licenses;

6 5. To serve free samples of the charitable collaboration beer
7 produced by the collaborating licensed brewers to visitors twenty-
8 one (21) years of age or older on the collaborating brewery licensed
9 premises;

10 6. To sell the charitable collaboration beer produced by the
11 collaborating licensee brewers for either on-premises or off-
12 premises consumption to consumers on the brewery premises, or on
13 premises located contiguous thereto;

14 7. To sell the charitable collaboration beer produced by the
15 collaborating licensed brewers at public events such as trade shows
16 or festivals; and

17 8. To purchase the charitable collaboration beer produced by
18 the collaborating licensed brewers in retail containers from the
19 holder of a beer distributor license to sell or serve in accordance
20 with this section.

21 B. Nothing in this section shall prohibit the holder of a
22 charitable collaboration brewer license from also holding or owning
23 an interest in the holder of a brewpub license.

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1 C. For purposes of this section, no visitor may sample more
2 than a total of twelve (12) fluid ounces of the charitable
3 collaboration beer per day. The brewer must restrict the
4 distribution and consumption of charitable collaboration beer
5 samples to an area within the licensed premises designated by the
6 brewer. A current floor plan that includes the designated sampling
7 area must be on file with the ABLE Commission. No visitor under
8 twenty-one (21) years of age shall be permitted to enter this
9 designated sampling area when samples are being distributed or
10 consumed. Samples of the charitable collaboration beer served by a
11 collaborating brewery under this section shall not be considered a
12 sale of beer within the meaning of Article XXVIII A of the Oklahoma
13 Constitution or Section 1-103 of Title 37A of the Oklahoma Statutes;
14 however, such samples of the charitable collaboration beer shall be
15 considered beer removed or withdrawn from the brewery for use or
16 consumption within the meaning of Section 5-110 of Title 37A of the
17 Oklahoma Statutes for excise tax determination and reporting
18 requirements. Sales and sampling may only occur between the hours
19 of 10:00 a.m. and 2:00 a.m.

20 D. If a small brewer is a licensed charitable collaborating
21 brewer and such small brewer holds a self-distribution license, it
22 shall authorize the holder thereof to distribute the charitable
23 collaboration beer produced to a holder of a retail beer license,
24 retail spirits license, mixed beverage license, beer and wine

1 license, caterer's license, special event license, public event
2 license, charitable auction license or brewpub license. If a small
3 brewer has elected to distribute through a distributor or self-
4 distribute in a subject territory, for purposes of the charitable
5 collaboration brewer license such small brewer and the other
6 collaborating brewer may elect to do both simultaneously in a
7 subject territory upon notice to the ABLE Commission.

8 E. The ABLE Commission shall promulgate rules, forms and fees
9 to implement and enforce the charitable collaboration brewer
10 license.

11 F. When more than one Oklahoma licensed brewer makes
12 application to the ABLE Commission to develop a charitable
13 collaboration beer offering and seeks to obtain a charitable
14 collaboration brewer license, the ABLE Commission shall evaluate the
15 application based upon any of the following:

16 1. Whether the collaboration has a legitimate charitable
17 purpose in this state, another state or a national charitable
18 effort;

19 2. Whether the formula needs approval by any federal regulatory
20 authority;

21 3. Whether the Oklahoma Tax Commission has been notified of the
22 request for a tax exemption to allow the collaborators to transfer-
23 in-bond products between the licensed premises of the collaborating
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1 brewers and whether the Tax Commission approves such transfer-in-
2 bond;

3 4. The license standing of each licensed collaborating brewer
4 in this state, including, but not limited to, any required storage
5 licenses.

6 Upon consideration of the application facts and detailed plans
7 submitted by the collaborating brewers, the ABLE Commission shall
8 make its determination whether or not to issue the charitable
9 collaboration brewer license. Upon approval of a charitable
10 collaboration brewer license, such license shall be issued to both
11 licensed brewers for the development and manufacture of a charitable
12 collaboration beer offering. Each licensed brewer shall be required
13 to post the charitable collaboration brewer license at their
14 licensed premises and such license number shall be clearly affixed
15 to any alcohol products stored or transferred-in-bond between the
16 collaborating breweries. The charitable collaboration beer offering
17 shall require a private label approved by the ABLE Commission
18 according to the label requirements promulgated by the ABLE
19 Commission rules.

20 SECTION 4. This act shall become effective November 1, 2019.

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22 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated
23 04/11/2019 - DO PASS, As Amended.

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