

An Act

ENROLLED SENATE
BILL NO. 936

By: Bice of the Senate

and

McEntire of the House

An Act relating to alcoholic beverages; amending Section 135, Chapter 366, O.S.L. 2016, as last amended by Section 34 of Enrolled Senate Bill No. 906 of the 1st Session of the 57th Oklahoma Legislature (37A O.S. Supp. 2018, Section 5-132), which relates to brand labels; allowing private or control labels for certain beers; authorizing the transfer of certain alcoholic materials in certain circumstances; requiring transfers to comply with federal law and regulations; requiring transferred items to bear certain numbers; abating taxation until certain occurrence; defining certain term; authorizing the Oklahoma Tax Commission and the Oklahoma Alcohol and Beverage Laws Enforcement Commission (ABLE Commission) to conduct inspections and audits; authorizing the Oklahoma Tax Commission to promulgate certain rules and forms; creating the charitable collaboration brewer license; granting certain authorities to charitable collaboration brewer licensees; disallowing prohibitions on certain cross-licensing; limiting the cumulative amount of certain beer that an individual may sample; directing the designation of an area in which samples may be offered; restricting sampling to certain designated areas, certain times, and individuals of or exceeding a certain age; requiring certain filing with the ABLE Commission; excluding from sales of beer the distribution of samples; acknowledging samples are withdrawals from inventory; authorizing certain cross-licensees to self-distribute certain beers to certain other licensees; authorizing certain

simultaneous distribution of certain beer upon notice to the ABLE Commission; directing the ABLE Commission to promulgate rules, forms, and fees; providing a means for the ABLE Commission to evaluate certain applications; requiring display of certain license; requiring the ABLE Commission's approval of certain labels; providing for codification; and providing an effective date.

SUBJECT: Alcoholic beverages

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

SECTION 1. AMENDATORY Section 135, Chapter 366, O.S.L. 2016, as last amended by Section 34 of Enrolled Senate Bill No. 906 of the 1st Session of the 57th Oklahoma Legislature (37A O.S. Supp. 2018, Section 5-132), is amended to read as follows:

Section 5-132. A. Except as provided in subsection D of this section, no alcoholic beverage shall be labeled, offered or advertised for sale in this state unless in accordance with rules promulgated pursuant to the provisions of Section 5-130 of this title and unless the brand label shall have been registered with and approved by the ABLE Commission and the appropriate fee paid as provided for in this section.

B. An application for registration of a brand label shall be filed by and fees paid by the manufacturer or brewer of the brand if the manufacturer or brewer is licensed by the ABLE Commission; however, if the brewer or manufacturer is represented by a manufacturer's agent, licensed nonresident seller, wine and spirits wholesaler or beer distributor, then the manufacturer's agent, nonresident seller, wine and spirits wholesaler or beer distributor may submit each label for each product the manufacturer or brewer offers for sale in this state, along with payment of the brand registration fee, on behalf of the manufacturer or brewer; provided, the manufacturer or brewer must fully reimburse the manufacturer's agent, licensed nonresident seller, wine and spirits wholesaler or

beer distributor for the cost of the brand registration fee within forty-five (45) days of the time the original brand registration fee is paid. Cordials and wines which differ only as to age or vintage year, as defined by such rules, shall be considered the same brand, and those that differ as to type or class may be considered the same brand by the ABLE Commission where consistent with the purposes of this section.

C. The application for registration of a brand label shall be filed on a form prescribed by the ABLE Commission, and shall contain such information as the ABLE Commission shall require. Such application shall be accompanied by a certified check, bank officers' check or draft or money order in the amount of the annual registration fee, or the properly prorated portion thereof prescribed by this section.

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

2. Each brand label registered and approved pursuant to this section shall be valid for a term of up to one (1) year, expiring on the June 30 next following registration, and may be renewed for subsequent terms of one (1) year beginning on the July 1 following the initial registration. Brand registration fees for labels registered after July 1 may be prorated through the following June 30 on a quarterly basis. The brand registration fee shall not be transferable, unless otherwise allowed by law. A nonresident seller who registered brands prior to ~~the effective date of this act~~ May 7, 2019, may transfer brand registrations to the brewer or manufacturer that produces those brands, provided the brewer or manufacturer has obtained a license, at no expense to the nonresident seller, brewer or manufacturer.

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

F. The ABLE Commission may at any time exempt any discontinued brand from fee provisions of this section where a manufacturer, brewer, beer distributor or wholesaler has an inventory of one hundred cases or less of liquor or wine and five hundred cases or less of beer, and certifies to the ABLE Commission in writing that such brand is being discontinued.

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

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

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

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

The Tax Commission and the ABLE Commission may conduct such inspections and audits necessary to maintain strict compliance and record keeping during the development, mixing, fermentation, brewing, storage or retail packaging, in whole or any part thereof, of an approved charitable collaboration beer. The Tax Commission shall promulgate rules and forms to exempt and allow transfer-in-

bond in accordance with the provisions of this act and ABLE Commission rules.

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

Charitable Collaboration Brewer License.

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

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

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

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

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

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

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

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

8. To purchase the charitable collaboration beer produced by the collaborating licensed brewers in retail containers from the

holder of a beer distributor license to sell or serve in accordance with this section.

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

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

D. If a small brewer is a licensed charitable collaborating brewer and such small brewer holds a self-distribution license, it shall authorize the holder thereof to distribute the charitable collaboration beer produced to a holder of a retail beer license, retail spirits license, mixed beverage license, beer and wine license, caterer's license, special event license, public event license, charitable auction license or brewpub license. If a small brewer has elected to distribute through a distributor or self-distribute in a subject territory, for purposes of the charitable collaboration brewer license such small brewer and the other collaborating brewer may elect to do both simultaneously in a subject territory upon notice to the ABLE Commission.

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

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

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

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

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

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

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

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

Passed the Senate the 14th day of May, 2019.

Presiding Officer of the Senate

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

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____