

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 608

By: David of the Senate

and

Kannady of the House

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7
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9 COMMITTEE SUBSTITUTE

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

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

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

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

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

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

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

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

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

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

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

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

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

17 10. "Brand extension" means:

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

21 (1) incorporates all or a substantial part of the
22 unique features of a preexisting brand of the
23 same licensed manufacturer, or
24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 22. "Good cause" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 55. "Small farm winery" means a wine-making establishment that
22 does not annually produce for sale more than fifteen thousand
23 (15,000) gallons of wine as reported on the United States Department
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1 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of
2 Wine Premises Operations (TTB Form 5120.17);

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

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

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

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

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

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

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

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

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

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

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

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

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

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