

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. 906

By: Bice of the Senate

and

McEntire of the House

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10 COMMITTEE SUBSTITUTE

11 An Act relating to alcoholic beverages; amending
12 Section 3, Chapter 366, O.S.L. 2016, as last amended
13 by Section 13, Chapter 304, O.S.L. 2018 (37A O.S.
14 Supp. 2018, Section 1-103), which relates to
15 definitions; adding certain definitions; modifying
16 certain definitions; amending Section 4, Chapter 366,
17 O.S.L. 2016, as last amended by Section 1, Chapter
18 312, O.S.L. 2018 (37A O.S. Supp. 2018, Section 1-
19 104), which relates to the Alcoholic Beverage Laws
20 Enforcement Commission; modifying the authorities of
21 certain interim licensees; amending Section 14,
22 Chapter 366, O.S.L. 2016, as last amended by Section
23 1, Chapter 315, O.S.L. 2018 (37A O.S. Supp. 2018,
24 Section 2-102), which relates to the brewer license;
 expanding authorities to pertain to cider; providing
 for the retroactive conversion of manufacturer
 licenses to brewer licenses; requiring additional
 licensure in certain circumstances; amending Section
 20, Chapter 366, O.S.L. 2016, as amended by Section
 12, Chapter 364, O.S.L. 2017 (37A O.S. Supp. 2018,
 Section 2-108), which relates to the beer distributor
 license; expanding authorities to pertain to cider;
 modifying certain retail sales authorities;
 authorizing the donation of beer or cider in certain
 circumstances; authorizing the transport of certain
 alcoholic beverages in specific circumstances;
 expanding certain existing exemption to

1 manufacturers; amending Section 25, Chapter 366,
2 O.S.L. 2016 (37A O.S. Supp. 2018, Section 2-113),
3 which relates to the caterer license; setting certain
4 purchase restriction on licensees; amending Section
5 32, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2018,
6 Section 2-120), which relates to the wholesaler's
7 agent license; narrowing sales authorization;
8 prohibiting certain cross-licensing; amending Section
9 47, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2018,
10 Section 2-135), which relates to the manufacturer's
11 license; narrowing the scope of certain license
12 authorities; eliminating certain restriction on
13 brewers; expanding to whom notice and a hearing must
14 be provided; modifying certain restriction on the
15 importation of alcoholic beverages; narrowing scope
16 of imports that require providing Commission with
17 certain information and documents; amending Section
18 48, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2018,
19 Section 2-136), which relates to the manufacturer's
20 agent license; making certain prohibition
21 inapplicable to beer distributor; amending Section
22 58, Chapter 366, O.S.L. 2016, as amended by Section
23 4, Chapter 312, O.S.L. 2018 (37A O.S. Supp. 2018,
24 Section 2-146), which relates to grounds to deny
certain licenses; making certain ownership interest
restriction applicable to brewers; allowing issuance
of beer distributor license to a limited liability
corporation; amending Section 60, Chapter 366, O.S.L.
2016, as amended by Section 1, Chapter 213, O.S.L.
2018 (37A O.S. Supp. 2018, Section 2-148), which
relates to license revocation and suspension; making
certain grounds for suspension or revocation
applicable to brewers; amending Section 71, Chapter
366, O.S.L. 2016 (37A O.S. Supp. 2018, Section 3-
101), which relates to personal use, possession, and
manufacture of alcoholic beverages; expanding
prohibition on certain sales of alcoholic beverages
to brewers; requiring all who make certain sales to
obtain the appropriate licensure; amending Section
72, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2018,
Section 3-102), which relates to rule promulgation
authority; expanding authority to promulgate rules to
inform consumers about brewers; amending Section 77,
Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2018,
Section 3-107), which relates to statutory regulation
of sales; modifying certain requirements to relate to
brewers and not manufacturers; amending Section 78,

1 Chapter 366, O.S.L. 2016, as last amended by Section
2 1, Chapter 209, O.S.L. 2018 (37A O.S. Supp. 2018,
3 Section 3-108), which relates to licensed distributor
4 agreements; modifying certain requirements to pertain
5 to brewers and cider manufacturers; amending Section
6 80, Chapter 366, O.S.L. 2016, as amended by Section
7 15, Chapter 364, O.S.L. 2017 (37A O.S. Supp. 2018,
8 Section 3-110), which relates to licensed beer
9 distributors; making certain requirements applicable
10 to brewers and cider manufacturers; providing an
11 exception to certain prohibition; making certain
12 sales authorization authorities available to brewers
13 and cider manufacturers; granting certain
14 authorizations for temporary events, with certain
15 restrictions and requirements; amending Section 81,
16 Chapter 366, O.S.L. 2016, as amended by Section 16,
17 Chapter 364, O.S.L. 2017 (37A O.S. Supp. 2018,
18 Section 3-111), which relates to termination of
19 distribution agreements; modifying certain
20 restriction as related to a small brewer licensee;
21 amending Section 82, Chapter 366, O.S.L. 2016 (37A
22 O.S. Supp. 2018, Section 3-112), which relates to
23 brewpubs; modifying who may qualify for a brewpub
24 license; amending Section 85, Chapter 366, O.S.L.
2016 (37A O.S. Supp. 2018, Section 3-115), which
relates to withdrawal from retailer's stock;
expanding applicability to cider; modifying
replacement requirements; providing certain
exception; amending Section 86, Chapter 366, O.S.L.
2016, as amended by Section 17, Chapter 364, O.S.L.
2017 (37A O.S. Supp. 2018, Section 3-116), which
relates to the sale of foreign-made or -bottled
alcoholic beverages; modifying certain exception as
related to a brewer; narrowing certain requirement
prohibition; modifying certain posting requirements
to be applicable to designated wholesalers; modifying
applicability of certain posting requirements;
amending Section 18, Chapter 364, O.S.L. 2017 (37A
O.S. Supp. 2018, Section 3-116.1), which relates to
posting requirements; modifying certain posting
requirements and making applicable to additional
licensees; modifying certain exception; amending
Section 19, Chapter 364, O.S.L. 2017 (37A O.S. Supp.
2018, Section 3-116.2), which relates to designated
wholesalers; making applicable to brewers and beer
distributors under certain circumstances; modifying
certain exception; amending Section 87, Chapter 366,

1 O.S.L. 2016 (37A O.S. Supp. 2018, Section 3-117),
2 which relates to the sales of alcoholic beverages
3 packaged with nonalcoholic promotional items; making
4 applicable to brewers; amending Section 89, Chapter
5 366, O.S.L. 2016 (37A O.S. Supp. 2018, Section 3-
6 119), which relates to prohibited business interests
7 and acts of certain licensees; expanding certain
8 prohibition to relate to brewers; amending Section
9 90, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2018,
10 Section 3-120), which relates to prohibited business
11 interests of certain licensees; expanding certain
12 prohibition to relate to brewers; amending Section
13 91, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2018,
14 Section 3-121), which relates to certain business
15 interests; expanding certain prohibition to relate to
16 brewers; amending Section 92, Chapter 366, O.S.L.
17 2016 (37A O.S. Supp. 2018, Section 3-122), which
18 relates to business interests in interactive
19 entertainment facilities; clarifying applicability of
20 certain prohibitions as related to brewers; modifying
21 certain requirements to be applicable to brewers;
22 modifying certain requirement on purchase of
23 alcoholic beverages; amending Section 93, Chapter
24 366, O.S.L. 2016 (37A O.S. Supp. 2018, Section 3-
123), which relates to the sale of alcoholic
beverages to wholesalers and retailers; expanding
certain restrictions on sales to be applicable to
beer distributors; providing a means to provide an
exception to certain prohibitions; defining certain
term; clarifying whether certain actions are or are
not inducements; amending Section 101, Chapter 366,
O.S.L. 2016, as amended by Section 21, Chapter 364,
O.S.L. 2017 (37A O.S. Supp. 2018, Section 4-104),
which relates to municipal occupational tax;
authorizing municipalities to levy an occupational
tax on brewers; modifying certain imposition of
certain liability as related to brewers; amending
Section 111, Chapter 366, O.S.L. 2016 (37A O.S. Supp.
2018, Section 5-108), which relates to promulgation
of certain rules; eliminating certain requirement
related to the shipping of beer into Oklahoma;
amending Section 112, Chapter 366, O.S.L. 2016 (37A
O.S. Supp. 2018, Section 5-109), which relates to
credits or refunds and stamps; expanding
applicability to brewers; amending Section 116,
Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2018,
Section 5-113), which relates to furnishing of

1 permits prior to certain sales; requiring beer
2 distributors to furnish copy of permit prior to
3 certain sales; requiring brewers to furnish copy of
4 permit prior to certain sales; amending Section 125,
5 Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2018,
6 Section 5-122), which relates to certain reports;
7 requiring brewers to make and transmit certain report
8 to the Oklahoma Tax Commission; modifying information
9 reported; amending Section 127, Chapter 366, O.S.L.
10 2016 (37A O.S. Supp. 2018, Section 5-124), which
11 relates to bond; requiring brewers to file certain
12 bond with the Oklahoma Tax Commission; authorizing
13 brewers to make certain deposits in lieu of filing
14 bond; amending Section 128, Chapter 366, O.S.L. 2016,
15 as amended by Section 4, Chapter 113, O.S.L. 2018
16 (37A O.S. Supp. 2018, Section 5-125), which relates
17 to certain information required for sales, transit
18 and delivery of alcoholic beverages; making certain
19 requirements applicable to brewers; amending Section
20 129, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2018,
21 Section 5-126), which relates to record keeping;
22 requiring brewers to keep certain records; amending
23 Section 135, Chapter 366, O.S.L. 2016, as amended by
24 Section 23, Chapter 364, O.S.L. 2017 (37A O.S. Supp.
2018, Section 5-132), which relates to the brand
label requirement; making certain requirements
applicable to brewers; providing for the transfer of
certain brands in certain circumstances; modifying
discretion to exempt discontinued brands from certain
fee provisions; and providing an effective date.

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

19 SECTION 1. AMENDATORY Section 3, Chapter 366, O.S.L.
20 2016, as last amended by Section 13, Chapter 304, O.S.L. 2018 (37A
21 O.S. Supp. 2018, Section 1-103), is amended to read as follows:

22 Section 1-103. As used in the Oklahoma Alcoholic Beverage
23 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;

24

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

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

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

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

18 10. "Brand extension" means:

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

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

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~~ brewer, the
4 majority of whose total volume of all brands of beer
5 distributed in this state by such ~~manufacturer~~ brewer
6 on January 1, 2016, was distributed as low-point beer,
7 desires to sell, introduces, begins selling or
8 theretofore has sold and desires to continue selling a
9 strong beer in this 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~~ brewer, 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 or cider upon which a license fee and a tax are imposed by
20 any law 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 manufacture of this product, cider may be manufactured by either
5 manufacturers or brewers. For the purposes of the distribution of
6 this product, cider may be distributed by either wine and spirits
7 wholesalers or beer distributors;

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

12 15. "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 16. "Designated products" means the brands of wine or spirits
18 offered for sale by a manufacturer that the manufacturer has
19 assigned to a designated wholesaler for exclusive distribution;

20 17. "Designated wholesaler" means a wine and spirits wholesaler
21 who has been selected by a manufacturer as a wholesaler appointed to
22 distribute designated products;

23 18. "Director" means the Director of the ABLE Commission;
24

1 ~~17.~~ 19. "Distiller" means any person who produces spirits from
2 any source or substance, or any person who brews or makes mash, wort
3 or wash, fit for distillation or for the production of spirits
4 (except a person making or using such material in the authorized
5 production of wine or beer, or the production of vinegar by
6 fermentation), or any person who by any process separates alcoholic
7 spirits from any fermented substance, or any person who, making or
8 keeping mash, wort or wash, has also in his or her possession or use
9 a still;

10 ~~18.~~ 20. "Distributor agreement" means the written agreement
11 between the distributor and ~~manufacturer~~ brewer as set forth in
12 Section 3-108 of this title;

13 ~~19.~~ 21. "Drug store" means a person primarily engaged in
14 retailing prescription and nonprescription drugs and medicines;

15 ~~20.~~ 22. "Dual-strength beer" means a brand of beer that,
16 immediately prior to April 15, 2017, was being sold and distributed
17 in this state:

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

21 b. as strong beer pursuant to the Alcoholic Beverage
22 Control Act in effect immediately prior to the
23 effective date of this act,

24

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

4 ~~21.~~ 23. "Fair market value" means the value in the subject
5 territory covered by the written agreement with the distributor or
6 wholesaler that would be determined in an arm's length transaction
7 entered into without duress or threat of termination of the
8 distributor's or wholesaler's rights and shall include all elements
9 of value, including goodwill and going-concern value;

10 ~~22.~~ 24. "Good cause" means:

- 11 a. failure by the distributor to comply with the material
12 and reasonable provisions of a written agreement or
13 understanding with the ~~manufacturer~~ brewer, or
14 b. failure by the distributor to comply with the duty of
15 good faith;

16 ~~23.~~ 25. "Good faith" means the duty of each party to any
17 distributor agreement and all officers, employees or agents thereof
18 to act with honesty in fact and within reasonable standards of fair
19 dealing in the trade;

20 ~~24.~~ 26. "Grocery store" means a person primarily engaged in
21 retailing a general line of food, such as canned or frozen foods,
22 fresh fruits and vegetables, and fresh and prepared meats, fish and
23 poultry;

24

1 ~~25.~~ 27. "Hotel" or "motel" means an establishment which is
2 licensed to sell alcoholic beverages by the individual drink and
3 which contains guestroom accommodations with respect to which the
4 predominant relationship existing between the occupants thereof and
5 the owner or operator of the establishment is that of innkeeper and
6 guest. For purposes of this section, the existence of other legal
7 relationships as between some occupants and the owner or operator
8 thereof shall be immaterial;

9 ~~26.~~ 28. "Legal newspaper" means a newspaper meeting the
10 requisites of a newspaper for publication of legal notices as
11 prescribed in Sections 101 through 114 of Title 25 of the Oklahoma
12 Statutes;

13 ~~27.~~ 29. "Licensee" means any person holding a license under the
14 Oklahoma Alcoholic Beverage Control Act, and any agent, servant or
15 employee of such licensee while in the performance of any act or
16 duty in connection with the licensed business or on the licensed
17 premises;

18 ~~28.~~ 30. "Low-point beer" shall mean any beverages containing
19 more than one-half of one percent (1/2 of 1%) alcohol by volume, and
20 not more than three and two-tenths percent (3.2%) alcohol by weight,
21 including but not limited to, beer or cereal malt beverages obtained
22 by the alcoholic fermentation of an infusion by barley or other
23 grain, malt or similar products;

24

1 ~~29.~~ 31. "Manufacturer" means a ~~brewer,~~ distiller, winemaker,
2 rectifier or bottler of any alcoholic beverage (other than beer) and
3 its subsidiaries, affiliates and parent companies;

4 ~~30.~~ 32. "Manufacturer's agent" means a salaried or commissioned
5 salesperson who is the agent authorized to act on behalf of the
6 manufacturer or nonresident seller in the state;

7 ~~31.~~ 33. "Meals" means foods commonly ordered at lunch or dinner
8 and at least part of which is cooked on the licensed premises and
9 requires the use of dining implements for consumption. Provided,
10 that the service of only food such as appetizers, sandwiches, salads
11 or desserts shall not be considered "meals";

12 ~~32.~~ 34. "Mini-bar" means a closed container, either
13 refrigerated in whole or in part, or nonrefrigerated, and access to
14 the interior of which is:

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

18 ~~33.~~ 35. "Mixed beverage cooler" means any beverage, by whatever
19 name designated, consisting of an alcoholic beverage and fruit or
20 vegetable juice, fruit or vegetable flavorings, dairy products or
21 carbonated water containing more than one-half of one percent (1/2
22 of 1%) of alcohol measured by volume but not more than seven percent
23 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is
24 packaged in a container not larger than three hundred seventy-five

1 (375) milliliters. Such term shall include but not be limited to
2 the beverage popularly known as a "wine cooler";

3 ~~34.~~ 36. "Mixed beverages" means one or more servings of a
4 beverage composed in whole or part of an alcoholic beverage in a
5 sealed or unsealed container of any legal size for consumption on
6 the premises where served or sold by the holder of a mixed beverage,
7 beer and wine, caterer, public event, charitable event or special
8 event license;

9 ~~35.~~ 37. "Motion picture theater" means an establishment which
10 is licensed by Section 2-110 of this title to sell alcoholic
11 beverages by the individual drink and where motion pictures are
12 exhibited, and to which the general public is admitted;

13 ~~36.~~ 38. "Nondesignated products" means the brands of wine or
14 spirits offered for sale by a manufacturer that have not been
15 assigned to a designated wholesaler;

16 39. "Nonresident seller" means any person licensed pursuant to
17 Section 2-135 of this title;

18 ~~37.~~ 40. "Retail salesperson" means a salesperson soliciting
19 orders from and calling upon retail alcoholic beverage stores with
20 regard to his or her product;

21 ~~38.~~ 41. "Occupation" as used in connection with "occupation
22 tax" means the sites occupied as the places of business of the
23 manufacturers, brewers, wholesalers, beer distributors, retailers,
24

1 mixed beverage licensees, on-premises beer and wine licensees,
2 bottle clubs, caterers, public event and special event licensees;

3 ~~39.~~ 42. "Original package" means any container of alcoholic
4 beverage filled and stamped or sealed by the manufacturer or brewer;

5 ~~40.~~ 43. "Package store" means any sole proprietor or
6 partnership that qualifies to sell wine, beer and/or spirits for
7 off-premise consumption and that is not a grocery store, convenience
8 store or drug store, or other retail outlet that is not permitted to
9 sell wine or beer for off-premise consumption;

10 ~~41.~~ 44. "Patron" means any person, customer or visitor who is
11 not employed by a licensee or who is not a licensee;

12 ~~42.~~ 45. "Person" means an individual, any type of partnership,
13 corporation, association, limited liability company or any
14 individual involved in the legal structure of any such business
15 entity;

16 ~~43.~~ 46. "Premises" means the grounds and all buildings and
17 appurtenances pertaining to the grounds including any adjacent
18 premises if under the direct or indirect control of the licensee and
19 the rooms and equipment under the control of the licensee and used
20 in connection with or in furtherance of the business covered by a
21 license. Provided that the ABLE Commission shall have the authority
22 to designate areas to be excluded from the licensed premises solely
23 for the purpose of:

24

- 1 a. allowing the presence and consumption of alcoholic
2 beverages by private parties which are closed to the
3 general public, or
4 b. allowing the services of a caterer serving alcoholic
5 beverages provided by a private party.

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

9 ~~44.~~ 47. "Private event" means a social gathering or event
10 attended by invited guests who share a common cause, membership,
11 business or task and have a prior established relationship. For
12 purposes of this definition, advertisement for general public
13 attendance or sales of tickets to the general public shall not
14 constitute a private event;

15 ~~45.~~ 48. "Public event" means any event that can be attended by
16 the general public;

17 ~~46.~~ 49. "Rectifier" means any person who rectifies, purifies or
18 refines spirits or wines by any process (other than by original and
19 continuous distillation, or original and continuous processing, from
20 mash, wort, wash or other substance, through continuous closed
21 vessels and pipes, until the production thereof is complete), and
22 any person who, without rectifying, purifying or refining spirits,
23 shall by mixing (except for immediate consumption on the premises
24 where mixed) such spirits, wine or other liquor with any material,

1 manufactures any spurious, imitation or compound liquors for sale,
2 under the name of whiskey, brandy, rum, gin, wine, spirits, cordials
3 or any other name;

4 ~~47.~~ 50. "Regulation" or "rule" means a formal rule of general
5 application promulgated by the ABLE Commission as herein required;

6 ~~48.~~ 51. "Restaurant" means an establishment that is licensed to
7 sell alcoholic beverages by the individual drink for on-premises
8 consumption and where food is prepared and sold for immediate
9 consumption on the premises;

10 ~~49.~~ 52. "Retail container for spirits and wines" means an
11 original package of any capacity approved by the United States
12 Bureau of Alcohol, Tobacco and Firearms;

13 ~~50.~~ 53. "Retailer" means a package store, grocery store,
14 convenience store or drug store licensed to sell alcoholic beverages
15 for off-premise consumption pursuant to a Retail Spirits License,
16 Retail Wine License or Retail Beer License;

17 ~~51.~~ 54. "Sale" means any transfer, exchange or barter in any
18 manner or by any means whatsoever, and includes and means all sales
19 made by any person, whether as principal, proprietor or as an agent,
20 servant or employee. The term "sale" is also declared to be and
21 include the use or consumption in this state of any alcoholic
22 beverage obtained within or imported from without this state, upon
23 which the excise tax levied by the Oklahoma Alcoholic Beverage
24 Control Act has not been paid or exempted;

1 ~~52.~~ 55. "Short-order food" means food other than full meals
2 including but not limited to sandwiches, soups and salads. Provided
3 that popcorn, chips and other similar snack food shall not be
4 considered "short-order food";

5 ~~53.~~ 56. "Small brewer" means a brewer who manufactures less
6 than twenty-five thousand (25,000) barrels of beer annually pursuant
7 to a validly issued Small Brewer License hereunder;

8 ~~54.~~ 57. "Small farm wine" means a wine that is produced by a
9 small farm winery with seventy-five percent (75%) or more Oklahoma-
10 grown grapes, berries, other fruits, honey or vegetables;

11 ~~55.~~ 58. "Small farm winery" means a wine-making establishment
12 that does not annually produce for sale more than fifteen thousand
13 (15,000) gallons of wine as reported on the United States Department
14 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of
15 Wine Premises Operations (TTB Form 5120.17);

16 ~~56.~~ 59. "Sparkling wine" means champagne or any artificially
17 carbonated wine;

18 ~~57.~~ 60. "Special event" means an entertainment, recreation or
19 marketing event that occurs at a single location on an irregular
20 basis and at which alcoholic beverages are sold;

21 ~~58.~~ 61. "Spirits" means any beverage other than wine or beer,
22 which contains more than one-half of one percent (1/2 of 1%) alcohol
23 measured by volume, and obtained by distillation, whether or not
24 mixed with other substances in solution and includes those products

1 known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and
2 fortified wines and similar compounds, but shall not include any
3 alcohol liquid completely denatured in accordance with the Acts of
4 Congress and regulations pursuant thereto;

5 ~~59.~~ 62. "Strong beer" means beer which, prior to the effective
6 date of this act, was distributed pursuant to the Oklahoma Alcoholic
7 Beverage Control Act, Section 501 et seq. of Title 37 of the
8 Oklahoma Statutes;

9 ~~60.~~ 63. "Successor ~~manufacturer~~ brewer" means a primary source
10 of supply, a brewer, a cider manufacturer or an importer that
11 acquires rights to a beer or cider brand from a predecessor
12 ~~manufacturer~~ brewer;

13 ~~61.~~ 64. "Tax Commission" means the Oklahoma Tax Commission;

14 ~~62.~~ 65. "Territory" means a geographic region with a specified
15 boundary;

16 ~~63.~~ 66. "Wine and spirits wholesaler" or "wine and spirits
17 distributor" means and includes any sole proprietorship or
18 partnership licensed to distribute wine and spirits in the state.
19 The term "wholesaler", as used in this act, shall be construed to
20 refer to a wine and spirits wholesaler; and

21 ~~64.~~ 67. "Wine" means and includes any beverage containing more
22 than one-half of one percent (1/2 of 1%) alcohol by volume and not
23 more than twenty-four percent (24%) alcohol by volume at sixty (60)
24 degrees Fahrenheit obtained by the fermentation of the natural

1 contents of fruits, vegetables, honey, milk or other products
2 containing sugar, whether or not other ingredients are added, and
3 includes vermouth and sake, known as Japanese rice wine.

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 2. AMENDATORY Section 4, Chapter 366, O.S.L.
8 2016, as last amended by Section 1, Chapter 312, O.S.L. 2018 (37A
9 O.S. Supp. 2018, Section 1-104), is amended to read as follows:

10 Section 1-104. A. The Alcoholic Beverage Laws Enforcement
11 Commission created in Section 1 of Article XXVIII of the Oklahoma
12 Constitution is hereby re-created. The purpose of the Commission
13 shall be to enforce the alcoholic beverage laws of the state, and
14 the Commission shall have such power and authority to enforce such
15 laws, rules and regulations as shall be prescribed by the Oklahoma
16 Alcoholic Beverage Control Act.

17 B. The Commission shall consist of seven (7) members, to be
18 appointed by the Governor with the advice and consent of the State
19 Senate; provided, members serving on October 1, 2017, shall continue
20 to serve until such time as their terms would have expired pursuant
21 to the provisions of Section 1 of Article XXVIII of the Oklahoma
22 Constitution. Five of the members shall be at-large members
23 representing the lay citizenry. The remaining two members shall be
24 persons with law enforcement experience in this state. Any time

1 there is a vacancy on the Commission, the Governor shall appoint a
2 replacement, with the advice and consent of the State Senate, within
3 ninety (90) days.

4 C. Members of the Commission shall be appointed for a term of
5 five (5) years.

6 D. No more than four members of the Commission shall be
7 appointed from the same political party. No more than two members
8 of the Commission shall be appointed from the same federal
9 congressional district.

10 E. No member of the Commission shall hold any license
11 authorized by the Oklahoma Alcoholic Beverage Control Act, or have
12 any interest in any capacity, in the manufacture, sale, distribution
13 or transportation of alcoholic beverages.

14 F. The members of the Commission shall be removable from office
15 for cause as other officers not subject to impeachment.

16 G. The Commission shall appoint a Director, whose duties shall
17 be defined as provided in Section 1-108 of this title.

18 H. The State of Oklahoma shall take all necessary steps to
19 ensure the timely implementation of Enrolled Senate Joint Resolution
20 No. 68 of the 2nd Session of the 55th Oklahoma Legislature, if
21 approved by the voters. Consistent with this objective, the ABLE
22 Commission shall have the power to issue interim licenses prior to
23 October 1, 2018, as follows:

24

1 1. Except for the sale of wine or beer to the public, an
2 interim license shall allow all qualified retail wine and retail
3 beer licensees to perform all activities permissible under a full
4 license including but not limited to purchasing, stocking and
5 storing the wine and/or full-strength beer prior to October 1, 2018.
6 In order to qualify for an interim license, the licensee must
7 satisfy all the requirements set forth in Article ~~XXVIII~~ XXVIII-A
8 of the Oklahoma Constitution and the Oklahoma Alcoholic Beverage
9 Control Act. This interim license shall convert to a full license
10 on October 1, 2018;

11 2. Package stores may install refrigerated coolers for the
12 storage of beer and wine prior to October 1, 2018, provided the
13 refrigerated coolers shall not be used to cool product below room
14 temperature prior to October 1, 2018; and

15 3. An interim license shall allow all qualified wine and
16 spirits wholesalers and beer distributors to perform all activities
17 permissible under a full license including but not limited to
18 selling and delivering wine and/or full-strength beer to all
19 qualified retail wine and retail beer licensees. A wine and spirits
20 wholesaler that has been designated by a manufacturer as a
21 distributor of its wine or spirits may post those designated
22 products by line-item, consistent with Section 3-116.2 of this
23 title, on September 15, 2018, for sale effective October 1, 2018.
24 In order to qualify for an interim license, the wine and spirits

1 wholesaler and beer distributor must comply with the provisions set
2 forth in Article ~~XXVIII~~ XXVIII-A of the Oklahoma Constitution and
3 the Oklahoma Alcoholic Beverage Control Act. The interim license
4 shall convert to a full license on October 1, 2018.

5 Provided, however, that a ~~manufacturer~~ brewer is only permitted
6 to sell beer or cider to a beer distributor holding a valid interim
7 license pursuant to this section as follows:

8 a. such sales may begin no sooner than September 1, 2018,

9 b. the beer distributor either must be assigned a beer
10 distributor territory by the ~~manufacturer~~ brewer
11 pursuant to a distributor agreement to begin October
12 1, 2018, or be a brewer or an affiliate of a brewer
13 that will be permitted to distribute beer within two
14 territories pursuant to the provisions of subsection E
15 of Section 3-108 of this title, and

16 c. the interim license only permits sales to retailers by
17 the interim licensee either in the distribution
18 territory as set forth in the distributor agreement or
19 in the two territories permitted pursuant to the
20 provisions of subsection E of Section 3-108 of this
21 title.

22 I. No retail wine or retail beer licensee may sell wine and/or
23 beer, other than low-point beer, and no package store may sell
24 refrigerated wine and/or beer, prior to October 1, 2018. The sale

1 or refrigeration of wine and/or beer in violation of this subsection
2 shall result in the revocation of the interim license and a monetary
3 fine of Twenty-five Thousand Dollars (\$25,000.00).

4 SECTION 3. AMENDATORY Section 14, Chapter 366, O.S.L.
5 2016, as last amended by Section 1, Chapter 315, O.S.L. 2018 (37A
6 O.S. Supp. 2018, Section 2-102), is amended to read as follows:

7 Section 2-102. A. A brewer license shall authorize the holder
8 thereof:

9 1. To manufacture, bottle, package and store beer and cider on
10 the licensed premises; and

11 2. To sell beer and cider in this state to holders of beer
12 distributor licenses and to sell beer and cider out of this state to
13 qualified persons.

14 B. A small brewer license shall authorize the holder thereof:

15 1. To manufacture, bottle, package and store beer produced by
16 the licensee on licensed premises;

17 2. To sell beer in this state to holders of beer distributor
18 licenses and retail licenses or to sell beer out of this state to
19 qualified persons;

20 3. To serve free samples of beer produced by the licensee to
21 visitors twenty-one (21) years of age or older;

22 4. To sell beer produced by the licensee for either on-premises
23 or off-premises consumption to consumers on the brewery premises, or
24 on premises located contiguous thereto;

1 5. To sell beer at public events such as trade shows or
2 festivals;

3 6. To purchase wine in retail containers from the holder of a
4 wholesaler license or as specifically provided by law; and

5 7. To sell, offer for sale and possess wine for on-premises
6 consumption.

7 C. Nothing in this act shall prohibit the holder of a small
8 brewer license from also holding or owning an interest in the holder
9 of a brewpub license.

10 D. For purposes of this section, no visitor may sample more
11 than a total of twelve (12) fluid ounces of beer per day. The
12 brewer must restrict the distribution and consumption of beer
13 samples to an area within the licensed premises designated by the
14 brewer. A current floor plan that includes the designated sampling
15 area must be on file with the ABLE Commission. No visitor under
16 twenty-one (21) years of age shall be permitted to enter this
17 designated sampling area when samples are being distributed or
18 consumed. Samples of beer served by a brewery under this section
19 shall not be considered a sale of beer within the meaning of Article
20 ~~XXVIII~~ XXVIII-A of the Oklahoma Constitution or Section 1-103 of
21 this title; however, such samples of beer shall be considered beer
22 removed or withdrawn from the brewery for use or consumption within
23 the meaning of Section 5-110 of this title for excise tax

24

1 determination and reporting requirements. Sales and sampling may
2 only occur between the hours of 10:00 a.m. and 2:00 a.m.

3 E. A small brewer self-distribution license shall authorize
4 holders of a small brewer license to distribute beer produced only
5 by such licensee to a holder of a retail beer license, retail
6 spirits license, mixed beverage license, beer and wine license,
7 caterer's license, special event license, public event license,
8 charitable auction license or brewpub license. A small brewer shall
9 elect whether it will distribute through a distributor or self-
10 distribute in a subject territory; however, a small brewer may not
11 elect to do both simultaneously in a subject territory. The
12 election shall be made through notice to the ABLE Commission. Any
13 changes to the election shall require immediate notification to the
14 ABLE Commission before the change in election will take effect. A
15 small brewer that elects to self-distribute in multiple territories
16 shall only be required to have one small brewer self-distribution
17 license.

18 F. All manufacturer's licenses held by out-of-state brewers
19 during the first calendar year beginning October 1, 2018, shall
20 automatically convert to brewer licenses and be deemed effective as
21 of the date of the first issuance of the manufacturer's license.
22 Upon the first renewal of said license, the brewer will need to
23 obtain the appropriate brewer's license. If a brewer elects to
24 market wine and spirits, the brewer will also be required to obtain

1 a manufacturer's license and comply with the rules and regulations
2 for both licenses.

3 SECTION 4. AMENDATORY Section 20, Chapter 366, O.S.L.
4 2016, as amended by Section 12, Chapter 364, O.S.L. 2017 (37A O.S.
5 Supp. 2018, Section 2-108), is amended to read as follows:

6 Section 2-108. A. A beer distributor license shall authorize
7 the holder thereof:

8 1. To purchase and import into this state ~~beer~~ cider from
9 persons authorized to sell the same who are the holders of
10 manufacturer's licenses, and their agents who are the holders of
11 manufacturer's agent licenses;

12 2. To purchase and import into this state beer or cider from
13 persons authorized to sell the same who are the holders of brewer's
14 or small brewer's licenses;

15 3. To purchase beer and cider from licensed ~~brewers~~ and beer
16 distributors in this state;

17 ~~3.~~ 4. To sell in retail containers to retailers, on-premises
18 beer and wine mixed beverage, caterer, special event, public event,
19 hotel beverage and airline/railroad beverage licensees or any other
20 licensee permitted to sell beer to consumers in this state, beer and
21 cider which has been received, unloaded and stored at the holder's
22 self-owned or leased and self-operated warehouses before such sale,
23 unless otherwise permitted by this section; ~~and~~

24

1 ~~4.~~ 5. To sell beer and cider in this state to beer distributors
2 and out of this state to qualified persons, including federal
3 instrumentalities and voluntary associations of military personnel
4 on federal enclaves in this state over which this state has ceded
5 jurisdiction;

6 6. To donate beer and cider to organizations, associations or
7 nonprofit corporations organized for political, fraternal,
8 charitable, religious or social purposes or to charitable events;
9 and

10 7. To transport wine, spirits, beer and cider in vehicles
11 owned, leased or operated by the beer distributor, a subsidiary of
12 the beer distributor, or its agent, in addition to any nonalcoholic
13 items. Provided, if the beer distributor transports wine and
14 spirits, a valid wine and spirits wholesaler license must be
15 maintained by the beer distributor or affiliated entity having
16 common ownership with the licensed beer distributor.

17 B. In the event that no in-state beer distributor for a
18 particular brewer or manufacturer is willing to deliver beer or
19 cider to a county or counties located within the state, the ABLE
20 Commission may grant an economic hardship exemption to an out-of-
21 state beer distributor for a particular brewer and waive the at-rest
22 requirement set forth in this section, upon a good-faith showing
23 that:

1 1. It is economically infeasible or impractical for an in-state
2 beer distributor for a particular brewer to deliver to the county or
3 counties due to remoteness, or population, or both;

4 2. No in-state beer distributor of a particular brewer or
5 manufacturer objects to the waiver within thirty (30) days of
6 receiving written notice of the economic hardship application sent
7 by the ABLE Commission; and

8 3. The out-of-state beer distributor agrees to pay all
9 necessary licensing fees and remit all applicable taxes to the State
10 of Oklahoma.

11 C. The economic hardship exemption provided for in subsection B
12 of this section shall renew annually, provided that no in-state beer
13 distributor for a particular brewer or manufacturer submits an
14 executed distribution agreement to assume responsibility to
15 distribute the beer in the subject county or counties at least sixty
16 (60) days prior to the renewal date of the exemption. The in-state
17 beer distributor who has executed a distribution agreement to assume
18 responsibility to distribute beer in the subject territory shall
19 compensate the out-of-state distributor the fair market value of the
20 distribution rights of the territory as determined pursuant to
21 Section 3-108 of this title.

22 D. Provided, nothing in this section shall require an Oklahoma
23 licensed beer distributor with an Oklahoma designated territory on
24 the effective date of this act to meet the hardship provisions in

1 subsections B and C of this section to continue to operate as a
2 licensed Oklahoma beer distributor.

3 SECTION 5. AMENDATORY Section 25, Chapter 366, O.S.L.
4 2016 (37A O.S. Supp. 2018, Section 2-113), is amended to read as
5 follows:

6 Section 2-113. A. 1. A caterer license may be issued to any
7 person for the purpose of sale, delivery or distribution of
8 alcoholic beverages incidental to the sale or distribution of food
9 on a premises not licensed by the ABLE Commission. For purposes of
10 this section, "incidental to the sale or distribution of food" means
11 food sales constituting at least thirty-five percent (35%) of the
12 caterer's total combined annual sales. A caterer license shall not
13 be issued to a person whose main purpose is the sale of alcoholic
14 beverages.

15 2. A caterer license may only be issued to those persons that
16 prepare, sell and distribute food for consumption either on licensed
17 or unlicensed premises. In order to renew a caterer license, annual
18 food sales must constitute at least thirty-five percent (35%) of the
19 caterer's total combined sales based on the most recent calendar
20 year. A caterer shall not be required to prepare, sell and
21 distribute food at every catered event as long as the caterer
22 satisfies the requirement set forth in this section.

23 3. Each caterer shall submit an annual sales report containing
24 revenue attributable to alcoholic beverages, food and all other

1 revenues attributable to the catering service. The annual sales
2 report must be submitted thirty (30) days prior to expiration of the
3 caterer license on forms prescribed by the ABLE Commission. The
4 caterer license may not be renewed if the caterer fails to provide
5 complete or sufficient financial data.

6 4. Each caterer shall submit a monthly event report containing
7 information on all events scheduled for the subsequent month. If an
8 event is scheduled after the first day of the month for an event to
9 occur in the same month, then the caterer shall report that event
10 within twenty-four (24) hours of scheduling the event or within
11 twenty-four (24) hours prior to the event, whichever occurs first.
12 The monthly event report shall be submitted on the first day of each
13 month.

14 5. All reports shall be submitted electronically on forms
15 prescribed by the ABLE Commission. Provided, if the caterer does
16 not have access to the Internet, then monthly reports must be
17 submitted by facsimile to the ABLE Commission's office in Oklahoma
18 City, in which case the caterer must retain a copy of the facsimile
19 confirmation sheet for at least twelve (12) months.

20 6. Any caterer who fails to submit a monthly report shall have
21 the caterer license automatically suspended until such time that the
22 caterer has fully complied with all reporting requirements. Any
23 caterer whose annual food sales do not exceed thirty-five percent
24

1 (35%) of his or her total annual combined sales shall not have the
2 caterer's license renewed.

3 B. The ABLE Commission shall promulgate rules governing the
4 application for and the issuance of caterer licenses.

5 C. The restrictions and rules which apply to the sale of mixed
6 beverages on the premises of a mixed beverage licensee also apply to
7 the sale under the authority of a caterer license. Any act which if
8 done on the premises of a mixed beverage licensee would be a ground
9 for revocation or suspension of the mixed beverage license is a
10 ground for revocation or suspension of a caterer license.

11 D. If the premises where the event being catered is held are
12 already operating pursuant to another type of license issued by the
13 ABLE Commission, the caterer and the other licensee shall both be
14 responsible for the actions of the caterer and shall both be subject
15 to penalties for violations by the caterer of the Oklahoma Alcoholic
16 Beverage Control Act and any rules promulgated thereto.

17 E. A caterer licensee may not store alcoholic beverages unless
18 the licensee has a storage license issued by the ABLE Commission. A
19 caterer licensee selling beer and cider to consumers shall only
20 purchase such beer and cider from the distributor or wholesaler
21 within the county in which the licensee will be selling the beer and
22 cider to consumers.

1 F. A caterer may provide alcoholic beverage sales on the
2 premises of a person currently applying for a mixed beverage
3 license, provided the following terms have been satisfied:

4 1. The caterer shall take reasonable steps to ensure that the
5 mixed beverage applicant uses only licensed employees to perform
6 licensable activities while using the caterer's license. The
7 caterer shall use his or her best efforts to attempt to have a
8 licensed employee on-site supervising the sale of such caterer's
9 alcoholic beverages at all times, but the caterer shall not be
10 disciplined for failing to have a licensed employee on-site. The
11 caterer expressly acknowledges that he or she is liable for all
12 violations of the Oklahoma Alcoholic Beverage Control Act and rules
13 of the ABLE Commission that are committed by the mixed beverage
14 applicant and its employees during this period;

15 2. The caterer and mixed beverage applicant must submit to the
16 ABLE Commission a written agreement setting forth all the terms of
17 the catering agreement at least twenty-four (24) hours prior to the
18 commencement of the catered event; and

19 3. The caterer may not provide alcoholic beverage sales on the
20 unlicensed premises of the mixed beverage applicant for more than
21 sixty (60) days, or after the applicant's license has been denied,
22 whichever occurs first.

23
24

1 G. A caterer may provide alcoholic beverage services for
2 temporary public events which have been licensed and approved by the
3 ABLE Commission.

4 H. A caterer may provide alcoholic beverage services for a
5 mixed beverage licensee which holds a live performing arts
6 presentation and is open to the public not more than one hundred
7 twenty (120) days per year.

8 SECTION 6. AMENDATORY Section 32, Chapter 366, O.S.L.
9 2016 (37A O.S. Supp. 2018, Section 2-120), is amended to read as
10 follows:

11 Section 2-120. A wholesaler's agent license shall authorize the
12 holder thereof:

13 1. To represent only the holders of licenses within this state,
14 other than retailers, authorized to sell ~~alcoholic beverages~~ wine
15 and spirits to ~~retail dealers~~ licensed retailers in Oklahoma; and

16 2. To solicit and to take orders for the purchase of ~~alcoholic~~
17 ~~beverages~~ wine and spirits from retailers including licensees
18 authorized to sell ~~alcoholic beverages by the individual drink for~~
19 ~~on-premises consumption~~ wine and spirits in Oklahoma.

20 Such license shall be issued only to agents and employees of the
21 holder of a license under the Oklahoma Alcoholic Beverage Control
22 Act, but no such license shall be required of an employee making
23 sales of ~~alcoholic beverages~~ wine and spirits on licensed premises
24

1 of the employee's principal. No applicant for a wholesaler's agent
2 license shall also hold a manufacturer's agent license.

3 SECTION 7. AMENDATORY Section 47, Chapter 366, O.S.L.
4 2016 (37A O.S. Supp. 2018, Section 2-135), is amended to read as
5 follows:

6 Section 2-135. A. All ~~out-of-state~~ distillers, winemakers,
7 ~~brewers and spirits manufacturers~~, importers, brokers and others ~~who~~
8 seeking to sell alcoholic beverages to wine and spirits ~~wholesalers~~
9 ~~and beer distributors~~ in Oklahoma, regardless of whether such sales
10 are consummated within or without the state, must either obtain a
11 manufacturer's license or contract with a person that maintains a
12 nonresident seller license in order to sell ~~alcoholic beverages~~ wine
13 and spirits intended for consumption within the State of Oklahoma.

14 A manufacturer's license or nonresident seller license shall
15 authorize the holder thereof to solicit and take orders for
16 ~~alcoholic beverages~~ wine and spirits from the holders of licenses
17 authorized to import the same into this state, and to ship or
18 deliver, or cause to be shipped or delivered, ~~alcoholic beverages~~
19 wine and spirits into Oklahoma pursuant to such sales.

20 B. ~~A brewer not licensed in this state selling beer to a~~
21 ~~nonresident seller shall have a written distribution sales agreement~~
22 ~~with the nonresident seller. Such agreement shall be subject to~~
23 ~~inspection by the ABLE Commission.~~

24

1 ~~C.~~ The ABLE Commission may, subject to the provisions of the
2 Oklahoma Alcoholic Beverage Control Act requiring notice and hearing
3 in the case of sanctions against holders of licenses, suspend or
4 revoke a brewer's license, manufacturer's license or nonresident
5 seller license for any violation of the Oklahoma Alcoholic Beverage
6 Control Act by the holder thereof.

7 ~~D.~~ C. No licensee in this state authorized to import alcoholic
8 beverages into this state shall purchase or receive any alcoholic
9 beverages from without this state from any person not holding a
10 valid and existing brewer, small brewer, manufacturer's ~~license~~ or
11 nonresident seller license. Every manufacturer's license or
12 nonresident seller license shall expire on the June 30 following its
13 issuance or renewal, and shall be eligible for subsequent renewal
14 terms of one (1) year beginning on the July 1 following each
15 expiration. License fees for a new or initial manufacturer's
16 license or nonresident seller license applied for after July 1 may
17 be prorated through the following June 30 on a quarterly basis.

18 ~~E.~~ D. The holder of a manufacturer's license or nonresident
19 seller license shall, promptly upon consignment of any ~~alcoholic~~
20 ~~beverages~~ wine and spirits to an importer in Oklahoma, forward to
21 the ABLE Commission a true copy of the invoice, bill of lading or
22 other document as the ABLE Commission may by rule prescribe, showing
23 the details of such shipment.

24

1 ~~F.~~ E. Any person, not otherwise a dealer in alcoholic
2 beverages, coming into possession of any alcoholic beverages as
3 security for or in payment of a debt, or as an insurer or its
4 transferee or assignee for the salvage or liquidation of an insured
5 casualty or damage or loss, or as an executor, administrator,
6 trustee or other fiduciary, may sell the beverages in one lot or
7 parcel to a duly licensed wholesaler or beer distributor at an
8 agreed-upon price without regard to current posted prices. However,
9 immediately after taking possession of the alcoholic beverages, the
10 person shall register with the Director and furnish a detailed list
11 of the alcoholic beverages and post with the Director a bond in such
12 amount as the Director deems sufficient to protect the state from
13 any taxes due on the alcoholic beverages. The person shall pay to
14 the Director a registration fee of Fifty Dollars (\$50.00), which fee
15 shall permit the sale of only the alcoholic beverages detailed in
16 the registration request. A wholesaler or beer distributor
17 receiving a lot or parcel of alcoholic beverages pursuant to this
18 subsection may sell it in one lot or parcel or more than one lot or
19 parcel to a licensed package store or mixed beverage licensee or
20 more than one licensed package store or mixed beverage licensee at
21 an agreed-upon price without regard to current posted prices;
22 provided, the total of the lots sold by the wholesaler or beer
23 distributor shall not exceed four (4) lots.

24

1 SECTION 8. AMENDATORY Section 48, Chapter 366, O.S.L.
2 2016 (37A O.S. Supp. 2018, Section 2-136), is amended to read as
3 follows:

4 Section 2-136. A manufacturer's agent license shall authorize
5 the holder thereof to represent only the holders of a manufacturer's
6 license or nonresident seller license and to solicit and take orders
7 for the sale of wine and spirits for the purpose of resale. No such
8 license shall be issued to any person until it shall have been shown
9 to the satisfaction of the ABLE Commission that the applicant has
10 been duly authorized to act as the agent of the principal he or she
11 proposes to represent, and that the principal or principals he or
12 she proposes to represent has been duly authorized to do business in
13 the State of Oklahoma, and has appointed a service agent in this
14 state. No applicant for a manufacturer's agent license shall also
15 hold an agent license. It shall be unlawful for any person other
16 than the holder of a manufacturer's agent license or an agent
17 license to solicit or take orders in the state from a wine and
18 spirits wholesaler ~~or beer distributor.~~

19 SECTION 9. AMENDATORY Section 58, Chapter 366, O.S.L.
20 2016, as amended by Section 4, Chapter 312, O.S.L. 2018 (37A O.S.
21 Supp. 2018, Section 2-146), is amended to read as follows:

22 Section 2-146. A. The ABLE Commission shall refuse to issue a
23 wine and spirits wholesaler, beer distributor, retail spirits,
24 retail wine or retail beer license, either on an original

1 application or a renewal application, if it has reasonable grounds
2 to believe and finds any of the following to be true:

3 1. Except in the case of a beer distributor, that the applicant
4 is not a citizen of the United States or is not a qualified elector
5 in this state, or has not been a continuous resident of this state
6 for the five (5) years next preceding the application for the
7 license;

8 2. That the applicant is under twenty-one (21) years of age;

9 3. That the applicant or any partner, or spouse of the
10 applicant or any partner, has been convicted of a felony;

11 4. That the applicant or any partner, or spouse of the
12 applicant or any partner, has been convicted of a violation of any
13 state or federal law relating to alcoholic beverages, has forfeited
14 a bond while any charge of such violation was pending, nor may any
15 license be granted for any purpose under the Oklahoma Alcoholic
16 Beverage Control Act to an Oklahoma resident, who has held or whose
17 spouse has held a Federal Liquor Stamp in Oklahoma before the
18 adoption of Article ~~XXVIII~~ XXVIII-A of the Oklahoma Constitution
19 unless the Liquor Stamp was granted for supplying alcoholic
20 beverages to a federal military installation, or was granted under
21 the Oklahoma Alcoholic Beverage Control Act;

22 5. That the applicant or any partner has, within twelve (12)
23 months next preceding the date of the application, violated any
24 provision of the Oklahoma Alcoholic Beverage Control Act or rule of

1 the ABLE Commission promulgated pursuant hereto. Provided, however,
2 that if the ABLE Commission has, during such twelve-month period,
3 suspended any license sought to be renewed, such renewal application
4 may be approved if the term of the suspension has been completed and
5 the applicant has complied with any special conditions imposed in
6 connection with the suspension;

7 6. That the applicant is not of good moral character, or that
8 the applicant is in the habit of using alcoholic beverages to
9 excess, or is mentally incapacitated. Provided, that the record in
10 any municipal court showing a conviction of violation of any
11 municipal ordinances or state statutes involving moral character or
12 public nuisance obtained after passage and approval of the Oklahoma
13 Alcoholic Beverage Control Act shall be received in evidence by the
14 ABLE Commission;

15 7. That the applicant does not own or have a written lease for
16 the premises for which a license is sought;

17 8. That the applicant, within twelve (12) months next preceding
18 the date of application, has been the holder of a license revoked
19 for cause;

20 9. That the applicant is not the real party in interest, or
21 intends to carry on the business authorized by the license as the
22 agent of another;

23

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1 10. That the applicant, in the case of an application for
2 renewal of any license, would not be eligible for such license on a
3 first application;

4 11. That the applicant is a person who appoints or is a law
5 enforcement official or is an employee of the ABLE Commission;

6 12. That the proposed location of the licensed premises would
7 violate a valid municipal nondiscriminatory zoning ordinance;

8 13. That, in the case of an application for a wine and spirits
9 wholesaler license or beer distributor license, any brewer or
10 manufacturer, including an officer, director or principal
11 stockholder thereof or any partner, has any financial interest in
12 the business to be conducted under the license, unless otherwise
13 permitted by law;

14 14. That the issuance of the license applied for would result
15 in a violation of any provision of the Oklahoma Alcoholic Beverage
16 Control Act;

17 15. That, in the case of an application for a wine and spirits
18 wholesaler or beer distributor license, the applicant or any
19 partner, or spouse of the applicant or any partner, is the holder or
20 partner of the holder of any other class of license issued under the
21 provisions of the Oklahoma Alcoholic Beverage Control Act, other
22 than an agent or employee license for employment by the applicant,
23 or a storage license, bonded warehouse license, carrier license or
24 private carrier license; provided, nothing shall prohibit a wine and

1 spirits wholesaler, who is otherwise qualified, from maintaining
2 beer distributor licenses in the state, nor a beer distributor, who
3 is otherwise qualified, from maintaining a wine and spirits
4 wholesaler license in the state;

5 16. That, in the case of an application for a retail spirits,
6 retail wine or retail beer license, the applicant or any partner is
7 the holder or partner of the holder, or employee of such holder of
8 any other class of license issued under the provisions of the
9 Oklahoma Alcoholic Beverage Control Act, other than a storage
10 license or an employee license for the proposed licensed premises of
11 the applicant, provided, nothing in this title shall prohibit an
12 applicant for a retail wine and/or retail beer license from
13 maintaining a separate mixed beverage, caterer, mixed
14 beverage/caterer combination license, and/or an on-premise beer and
15 wine license, if the retail wine and/or retail beer license is not
16 situated within or adjacent to the same physical space wherein the
17 on-premises license is maintained; or

18 17. That the applicant or any partner, spouse, employee or
19 other person affiliated with the applicant is not in compliance with
20 the tax laws of this state as required in Article ~~XXVIII~~ XXVIII-A
21 of the Oklahoma Constitution.

22 B. The provisions of this section shall not operate to prohibit
23 the issuance of a beer distributor license to a corporation or
24 partnership or limited liability company.

1 SECTION 10. AMENDATORY Section 60, Chapter 366, O.S.L.
2 2016, as amended by Section 1, Chapter 213, O.S.L. 2018 (37A O.S.
3 Supp. 2018, Section 2-148), is amended to read as follows:

4 Section 2-148. A. Any license issued pursuant to the
5 provisions of the Oklahoma Alcoholic Beverage Control Act by the
6 ABLE Commission, after due notice and hearing, may be revoked or
7 suspended if the ABLE Commission finds or has grounds to believe
8 that the licensee has:

9 1. Violated any rule promulgated by the ABLE Commission;

10 2. Procured a license through fraud, or misrepresentation, or
11 concealment of a material fact;

12 3. Made any false representation or statement to the ABLE
13 Commission or the Oklahoma Tax Commission in order to prevent or
14 induce action by the ABLE Commission or the Tax Commission;

15 4. Maintained an unsanitary establishment or has supplied
16 impure or otherwise deleterious beverages or food;

17 5. Stored, possessed, mixed or served on the premises of a
18 bottle club any alcoholic beverage upon which the tax levied by
19 Section 5-101 of this title has not been paid as provided for in the
20 Oklahoma Alcoholic Beverage Control Act, in a county of this state
21 where the sale of alcoholic beverages by the individual drink for
22 on-premises consumption has not been authorized;

23 6. Misrepresented to a customer or the public any alcoholic
24 beverage sold by the licensee;

1 7. Had any permit or license issued by the Tax Commission and
2 required by the Oklahoma Alcoholic Beverage Control Act, suspended
3 or revoked by the Tax Commission; or

4 8. Is not in compliance with the tax laws of this state as
5 required in Article ~~XXVIII~~ XXVIII-A of the Oklahoma Constitution.

6 B. The ABLE Commission may revoke or suspend the license of any
7 mixed beverage, caterer or bottle club licensee if the ABLE
8 Commission finds or has grounds to believe that such licensee:

9 1. Has acted as an agent of a manufacturer, brewer or
10 wholesaler of alcoholic beverages;

11 2. Is a manufacturer, brewer or wholesaler of alcoholic
12 beverages;

13 3. Has borrowed money or property or accepted gratuities or
14 rebates from a manufacturer, brewer or wholesaler of alcoholic
15 beverages;

16 4. Has obtained the use of equipment from any manufacturer, brewer
17 brewer or wholesaler of alcoholic beverages or any agent thereof;

18 5. Has violated any of the provisions of the Oklahoma Alcoholic
19 Beverage Control Act for which mandatory revocation or suspension is
20 not required;

21 6. Has been convicted within the past twenty-five (25) years,
22 of a violation of any state or federal law relating to alcoholic
23 beverage for which mandatory revocation or suspension is not
24 required; or

1 7. Is not in compliance with the tax laws of this state as
2 required in Article ~~XXVIII~~ XXVIII-A of the Oklahoma Constitution.

3 C. The ABLE Commission may revoke or suspend the license of any
4 retail, mixed beverage, caterer or bottle club licensee if the ABLE
5 Commission finds or has grounds to believe that such licensee has
6 borrowed money or property or accepted gratuities, discounts,
7 rebates, free goods, allowances or other inducements from a wine and
8 spirits wholesaler or beer distributor.

9 D. The ABLE Commission shall have the authority to revoke the
10 license of any licensee if the ABLE Commission finds:

11 1. That the licensee knowingly sold alcoholic beverages or
12 allowed such beverages to be sold, delivered or furnished to any
13 person under the age of twenty-one (21) years or to any person
14 visibly intoxicated or adjudged insane or mentally deficient;

15 2. That the licensee, any general or limited partner of the
16 licensee, or in the case of a corporation, an officer or director of
17 the corporation, has been convicted of a felony or is not in
18 compliance with the tax laws of this state as required in Article
19 ~~XXVIII~~ XXVIII-A of the Oklahoma Constitution. Provided, an
20 employee license may be issued and held by a person who has been
21 convicted of a felony if such conviction was not for an offense
22 specified in paragraph 2 of Section 571 of Title 57 of the Oklahoma
23 Statutes or an offense under the provisions of this title, and if
24

1 such conviction was more than five (5) years prior to the issuance
2 of the license;

3 3. That, in the case of a wine and spirits wholesaler, beer
4 distributor, retail spirits, retail wine or retail beer licensee,
5 the holder of the license or any member of a general or limited
6 partnership which is the holder of such a license, has been
7 convicted of a prohibitory law relating to the sale, manufacture or
8 transportation of alcoholic beverages which constitutes a felony.

9 E. If the ABLE Commission shall find by a preponderance of the
10 evidence as in civil cases that a licensee has knowingly sold any
11 alcoholic beverage to any person under the age of twenty-one (21)
12 years, after a public hearing, the ABLE Commission shall revoke such
13 license and no discretion as to the revocation shall be exercised by
14 the ABLE Commission.

15 F. The ABLE Commission shall have the authority to promulgate
16 rules to establish a penalty schedule for violations of any
17 provision of the Oklahoma Alcoholic Beverage Control Act or any rule
18 of the ABLE Commission. The schedule shall provide for suspension
19 or revocation of any license for major and minor violations as
20 determined by the ABLE Commission. Penalties shall be increasingly
21 severe with each violation by a licensee.

22 Provided, that for a fourth major violation by a licensee within
23 a twenty-four-month period, the penalty shall be mandatory
24 revocation of license. The twenty-four-month period shall be

1 calculated from the date of the most recent violation as set forth
2 in an order signed by the Director or the designee of the Director.

3 G. The ABLE Commission or the Tax Commission may impose a
4 monetary penalty in lieu of or in addition to suspension of a
5 license. The amount of the fine for a major violation shall be
6 computed by multiplying the proposed number of days of the
7 suspension period by One Hundred Dollars (\$100.00). The amount of
8 the fine for a minor violation shall be computed by multiplying the
9 number of days of the proposed suspension period by Fifty Dollars
10 (\$50.00).

11 H. The failure of any licensee to pay a fine or serve a
12 suspension imposed by the ABLE Commission or the Tax Commission
13 shall result in the revocation of the license of the licensee.

14 I. If the ABLE Commission or the Tax Commission finds that
15 public health, safety or welfare require emergency action, and
16 incorporates a finding to that effect in its order, summary
17 suspension of a license may be ordered pending proceeding for
18 revocation or other action, pursuant to the provisions of Section
19 314 of Title 75 of the Oklahoma Statutes.

20 SECTION 11. AMENDATORY Section 71, Chapter 366, O.S.L.
21 2016 (37A O.S. Supp. 2018, Section 3-101), is amended to read as
22 follows:

23 Section 3-101. A. No person shall manufacture, rectify, sell,
24 possess, store, import into or export from this state, transport or

1 deliver any alcoholic beverage except as specifically provided in
2 the Oklahoma Alcoholic Beverage Control Act. Provided, that nothing
3 herein shall prevent the possession and transportation of alcoholic
4 beverages for the personal use of the possessor and his or her
5 family and guests, so long as the Oklahoma excise tax has been paid
6 thereon, except for beer. Provided, further, that nothing herein
7 shall prevent a person from making beer, cider or wine, by simple
8 fermentation and without distillation for personal use if the maker
9 of such beverages has first applied for and possesses a valid
10 personal use permit issued by the ABLE Commission and the total
11 volume of beer, cider or wine produced in any given calendar year is
12 less than two hundred (200) gallons. No beverages made pursuant to
13 a personal use permit shall be sold or offered for sale.

14 B. 1. Any duly licensed physician or dentist may possess and
15 use alcoholic beverages in the strict practice of the profession and
16 any hospital or other institution caring for sick or diseased
17 persons may possess and use alcoholic beverages for the treatment of
18 bona fide patients of such hospital or institution. Any drugstore
19 employing a licensed pharmacist may possess and use alcoholic
20 beverages in the preparation of prescriptions of duly licensed
21 physicians.

22 2. The possession, transportation and dispensation of wine by
23 any authorized representative of any church for the conducting of a
24 bona fide rite or religious ceremony conducted by such church shall

1 not be prohibited by the Oklahoma Alcoholic Beverage Control Act;
2 nor shall such act prevent the sale, shipping or delivery of
3 sacramental wine by any person holding a sacramental wine supplier
4 license issued pursuant to the Oklahoma Alcoholic Beverage Control
5 Act to any religious corporation or society of this state holding a
6 valid exemption from taxation issued pursuant to Section 501(a) of
7 the Internal Revenue Code, 1954, and listed as an exempt
8 organization in Section 501(c) (3) of the Internal Revenue Code,
9 1954, of the United States, as amended.

10 3. Provided further, that nothing in the Oklahoma Alcoholic
11 Beverage Control Act shall prevent the possession, transportation
12 and sale of alcoholic beverages within military reservations and in
13 accordance with the laws and rules governing such military
14 reservations, provided that the Oklahoma excise tax has been paid on
15 such beverages.

16 C. 1. Except as otherwise authorized by law, it is unlawful
17 for any brewer, manufacturer, wine and spirits wholesaler, beer
18 distributor or retailer of alcoholic beverages, located and doing
19 business from outside this state, to make retail sales of alcoholic
20 beverages to purchasers located in this state or to ship alcoholic
21 beverages sold at retail to persons located in this state. Any
22 person who engages in the sale or shipping of alcoholic beverages in
23 violation of the provisions of this subsection, upon conviction,
24 shall be guilty of a felony punishable by imprisonment for not more

1 than five (5) years, if the sale or delivery is made to a person
2 under twenty-one (21) years of age, or a misdemeanor, if the sale or
3 delivery is made to a person twenty-one (21) years of age or older.

4 2. The fine for a violation of this subsection shall be not
5 more than Five Thousand Dollars (\$5,000.00).

6 3. In addition, if the person holds a license issued by the
7 ABLE Commission, the license shall be revoked pursuant to Section 60
8 of this act.

9 D. All brewers, importers, brokers and others who sell beer or
10 cider to licensed beer distributors in Oklahoma or manufacturers,
11 importers, brokers and others who sell cider to licensed beer
12 distributors in Oklahoma, regardless of whether such sales are
13 consummated within or without the state, must obtain a license, as
14 the case may be, in order to sell beer or cider intended for
15 consumption within the State of Oklahoma.

16 SECTION 12. AMENDATORY Section 72, Chapter 366, O.S.L.
17 2016 (37A O.S. Supp. 2018, Section 3-102), is amended to read as
18 follows:

19 Section 3-102. The ABLE Commission is authorized to promulgate
20 such rules with respect to packaging, marking, branding and labeling
21 of alcoholic beverages sold or possessed for sale within this state,
22 including such rules:

23 1. As will prohibit deception of the consumer with respect to
24 such products or the quantity thereof and as will prohibit,

1 irrespective of falsity, such statement relating to age,
2 manufacturing processes, analyses, guarantees, and scientific or
3 irrelevant matter as the ABLE Commission finds likely to mislead or
4 confuse the consumer;

5 2. As will provide the consumer with adequate information as to
6 the identity and quality of the products, the net contents of the
7 package, and the manufacturer, brewer or importer of the product;
8 and

9 3. As will prohibit statements on the label that are false,
10 misleading, obscene or indecent.

11 The ABLE Commission may promulgate, in whole or in part, or with
12 such modification as it deems desirable, rules of the federal
13 government relating to labeling of distilled spirits promulgated
14 under the Federal Alcohol Administration Act (27 U.S.C. 205).

15 SECTION 13. AMENDATORY Section 77, Chapter 366, O.S.L.
16 2016 (37A O.S. Supp. 2018, Section 3-107), is amended to read as
17 follows:

18 Section 3-107. A. In order to provide for regulation of the
19 sales and distribution of beer in this state by the ABLE Commission,
20 this Legislature hereby declares it is necessary to implement the
21 section.

22 B. Statutory regulation of the sales and distribution of
23 designated brands in designated territories by distributors shall
24 include but not be limited to:

1 1. A requirement for written distributor agreements between a
2 ~~manufacturer~~ brewer and distributor designating a specific territory
3 within which the distributor may sell the designated brands of the
4 ~~manufacturer~~ brewer;

5 2. Provisions for prohibited acts applicable to the distributor
6 and ~~manufacturer~~ brewer; and

7 3. Provisions for penalties for violations.

8 SECTION 14. AMENDATORY Section 78, Chapter 366, O.S.L.
9 2016, as last amended by Section 1, Chapter 209, O.S.L. 2018 (37A
10 O.S. Supp. 2018, Section 3-108), is amended to read as follows:

11 Section 3-108. A. The provisions of this section shall be in
12 effect except as otherwise provided in Article ~~XXVIII~~ XXVIII-A of
13 the Oklahoma Constitution.

14 B. Subject to the provisions of subsection D of this section,
15 every licensed brewer or cider manufacturer authorized to sell its
16 beer or cider in this state shall:

17 1. Enter into a distributor agreement with a licensed
18 distributor, as defined herein, to sell the designated brands,
19 including brand extensions, of the brewer or cider manufacturer.
20 The agreement shall designate the sales territory of that licensed
21 distributor and the designated brands to be sold by the licensed
22 distributor. All such distributor agreements shall specifically
23 authorize this sale of the designated brands by a licensed
24 distributor within that sales territory. All such distributor

1 agreements shall further provide that the licensed brewer or cider
2 manufacturer who desires to sell a brand extension of a low-point
3 beer in Oklahoma must assign the low-point beer brand extension to
4 the licensed distributor to whom the licensed brewer or cider
5 manufacturer granted the exclusive sales territory to the low-point
6 beer brand from which the brand extension resulted;

7 2. Sell its registered and approved designated brands only to a
8 licensed distributor with whom that brewer or cider manufacturer has
9 a distributor agreement designating the sales territory of the
10 licensed distributor and the designated brands to be sold by the
11 licensed distributor;

12 3. Authorize only one licensed distributor for each designated
13 sales territory. Such licensed distributor shall be the only
14 licensed distributor for the designated brands of the authorizing
15 brewer or cider manufacturer within that designated sales territory;
16 and

17 4. Designate who is responsible for the distribution of its
18 designated brands.

19 C. Subject to the provisions of subsection D of this section,
20 any and all licensed distributors possessing the rights to
21 distribute a low-point beer brand in a specific territory prior to
22 the introduction of that low-point beer's correlating beer brand
23 extension in that specific territory shall retain the right to
24

1 distribute the low-point beer from which the brand extension
2 resulted.

3 D. 1. No later than August 2, 2018, a brewer shall assign the
4 exclusive right to distribute a beer brand, including brand
5 extensions thereof, to the low-point beer distributor who was, prior
6 to October 1, 2018, assigned the exclusive distribution rights to
7 the low-point beer from which the brand extension arose without
8 charge or payment of compensation, unless the low-point beer
9 distributor is, on October 1, 2018, a brewer of beer or low-point
10 beer and has therefore been distributing low-point beer pursuant to
11 a license to so distribute, subject to the provisions of subsection
12 E of this section. This subsection shall not apply to a small
13 brewer as defined in Section 1-103 of this title.

14 2. With respect to brand extensions which arise after October
15 1, 2018, the brewer or cider manufacturer shall assign the exclusive
16 right to distribute the brand extension to the distributor who has
17 been assigned the exclusive distribution rights to the beer or cider
18 from which the brand extension arose, without charge or payment of
19 compensation.

20 3. With respect to a brand of beer or cider which was, prior to
21 April 15, 2017, distributed in this state only as strong beer or
22 cider pursuant to the Oklahoma Alcoholic Beverage Control Act then
23 in effect, if a low-point version of the brand is introduced after
24 April 15, 2017, no later than August 2, 2018, the brewer or cider

1 manufacturer shall assign the exclusive rights to distribute the
2 low-point version of the brand to the distributor who was,
3 immediately prior to the introduction of the low-point version of
4 the brand, assigned the exclusive distribution rights to the strong
5 version of the brand without charge or payment of compensation.

6 4. No later than August 2, 2018, with respect to dual strength
7 beer, the brewer thereof shall assign the exclusive right to
8 distribute the brands represented by the dual strength beer to
9 either the low-point beer distributor or the nonresident seller who
10 had theretofore been assigned the exclusive distribution rights in
11 the territory to either version of the dual strength beer; provided,
12 however, whichever party is selected by the brewer must compensate
13 the party that was not selected by the brewer for the loss of the
14 distribution rights with respect to that particular territory.
15 Whichever party is selected shall obtain the requisite distributor
16 license and shall be subject to the provisions of the Oklahoma
17 Alcoholic Beverage Control Act.

18 5. Compensation for the purposes of this provision shall be the
19 fair market value of the party losing its distribution rights with
20 respect to the beer within that specific territory. Fair market
21 value shall be determined as set forth in Section 3-111 of this
22 title and shall take into account all aspects of brand valuation,
23 including but not limited to:

24

- a. the diminished value of the distribution of one version of beer as a consequence of the subsequent introduction of the other version,
- b. the expected annual sales and earnings of the distributor agreement,
- c. the length of time the existing distributor held in the distribution sales agreement, and
- d. any other relevant items of value, such as goodwill and going concern.

E. If a brewer, whether directly or through an affiliate, maintained one or more licenses to distribute low-point beer in this state prior to October 1, 2018, then up to two of the brewer's low-point beer distribution licenses shall automatically convert to beer distribution licenses on October 1, 2018, and such brewer shall be permitted to continue to distribute beer in two territories within which it currently distributes without the appointment of a distributor for such period of time as determined by the Legislature and consistent with the Constitution of the State of Oklahoma; provided however, it shall not be permitted to distribute beer outside of the territory unless it enters into a distributor agreement with an independent licensed distributor as provided in paragraph 1 of subsection B of this section. This section shall not apply to small brewers that have elected to self-distribute.

1 F. If, on October 1, 2018, a licensed distributor possesses
2 inventory of a brand that it is no longer authorized to distribute
3 within this state, such inventory shall be sold to a licensed
4 distributor authorized to distribute such brand, at a price not to
5 exceed the total of the actual purchase price of the selling
6 distributor plus the cost of inbound and outbound shipping to the
7 purchasing distributor. The provisions of this paragraph shall not
8 apply to inventory purchased on or after September 15, 2018.

9 SECTION 15. AMENDATORY Section 80, Chapter 366, O.S.L.
10 2016, as amended by Section 15, Chapter 364, O.S.L. 2017 (37A O.S.
11 Supp. 2018, Section 3-110), is amended to read as follows:

12 Section 3-110. A. A licensed distributor designated as the
13 licensed distributor for a beer brand within a designated sales
14 territory shall present that beer brand for sale to all on-premise
15 licensees on the same price basis and without discrimination and to
16 all off-premise licensees on the same price basis within a
17 particular county and without discrimination. A licensed
18 distributor shall not sell, supply or deliver, either directly or
19 indirectly through a third party, a beer brand to a licensed
20 retailer outside of the designated sales territory of the designated
21 distributor nor to any person the licensed distributor has reason to
22 believe will sell or supply any quantity of the beer brand to any
23 retail location outside of the designated sales territory of the
24 designated distributor.

1 B. All beer shall only be transported by a marked conveyance
2 owned or leased by the licensed distributor and operated by the
3 licensed distributor or an employee of the distributor for the
4 products of a licensed brewer or cider manufacturer within the
5 designated sales territory to the address and location of a licensed
6 retailer within that designated sales territory.

7 C. Any beer sold by the licensed distributor shall not be
8 delivered to, received by or stored at any place other than the
9 address and location of the licensed retailer for which state and
10 local retailer licenses or permits have been issued, except as
11 otherwise provided by law.

12 D. With the approval of the licensed brewer or cider
13 manufacturer, a licensed distributor may sell the designated brands
14 to a licensed retailer located in a designated sales territory of
15 another licensed distributor if that licensed distributor is
16 temporarily unable for any reason to provide the designated brands
17 of the licensed brewer or cider manufacturer within its designated
18 sales territory.

19 E. All beer purchased by a licensed distributor for resale in
20 this state shall physically come into the possession of the licensed
21 distributor and be unloaded in and distributed from the licensed
22 warehouses of the licensed distributor located in this state prior
23 to being resold in this state.

24

1 F. For temporary events, beer distributors shall be permitted
2 to park full trailers and Waymatics in the supplier area of the
3 events for the purposes of pulling and selling product to special
4 event, public event, caterer and mixed beverage licensees. The
5 trailer/Waymatic shall be deemed an extension of the licensed
6 premises of the beer distributor and no separate storage license
7 shall be necessary. The following shall apply to beer and cider
8 transactions during temporary events:

9 1. Beer distributors shall be permitted to deliver the beer or
10 cider from the trailer to the selling locations of the licensee(s)
11 within the event;

12 2. Beer distributors may not sell directly to consumers;

13 3. Each delivery of beer or cider shall be accompanied by an
14 invoice giving the date of purchase and the quantities delivered;

15 4. At least every fourth (4th) day of the event, the
16 distributor shall generate and deliver a summary invoice. Within
17 three days after the end of the event, the beer distributor shall
18 reconcile the invoices with the deliveries made during the event and
19 generate and deliver a final invoice to be paid immediately upon
20 delivery;

21 5. For temporary events lasting less than five (5) days and for
22 university game days, the beer distributor's invoice shall be
23 generated and submitted to the purchasing licensee the first
24

1 business day following the event. The licensee shall pay the
2 invoice upon receipt; and

3 6. For all temporary events, the beer distributor has the
4 option of requiring the purchasing licensee to deliver a check for
5 the full amount of the product contained within the trailer(s) at
6 the beginning of the event to be held by the beer distributor
7 pending completion of the event and reconciliation and payment.

8 Such a requirement shall not be deemed a consignment sale, a credit
9 transaction, or a violation of any rules or law.

10 SECTION 16. AMENDATORY Section 81, Chapter 366, O.S.L.
11 2016, as amended by Section 16, Chapter 364, O.S.L. 2017 (37A O.S.
12 Supp. 2018, Section 3-111), is amended to read as follows:

13 Section 3-111. A. Except as provided in subsection F of this
14 section, a small brewer is not subject to the termination provisions
15 of this section.

16 B. 1. Except as provided in subsections C, D and E of this
17 section, no brewer shall terminate a distributor agreement with any
18 beer distributor unless all of the following occur:

19 a. the brewer establishes good cause for such
20 termination,

21 b. the beer distributor receives written notification by
22 certified mail, return receipt requested, from the
23 brewer of the alleged noncompliance and is afforded no
24 less than sixty (60) days in which to cure such

1 noncompliance. If not capable of being cured within
2 the sixty-day period, the beer distributor shall begin
3 the cure within the sixty-day period and diligently
4 pursue the cure as promptly as feasible,

5 c. the beer distributor fails to cure such noncompliance
6 within the allotted cure period, and

7 d. the brewer provides written notice by certified mail,
8 return receipt requested, to the beer distributor of
9 such continued noncompliance. The notification shall
10 contain a statement of the intention of the brewer to
11 terminate the distributor agreement, the reasons for
12 the termination and the date the termination shall
13 take effect.

14 2. If a beer distributor cures an alleged noncompliance within
15 the cure period provided in subparagraph b of paragraph 1 of this
16 subsection, any notice of termination from a brewer to a beer
17 distributor shall be null and void.

18 C. A brewer may immediately terminate a distributor agreement,
19 effective upon furnishing written notification to the beer
20 distributor by certified mail, return receipt requested, for any of
21 the following reasons:

22 1. The beer distributor's failure to pay any account when due
23 and upon written demand by the brewer for such payment, in
24 accordance with agreed payment terms;

1 2. The assignment or attempted assignment by the beer
2 distributor for the benefit of creditors, the institution of
3 proceedings in bankruptcy by or against the beer distributor, the
4 dissolution or liquidation of the beer distributor or the insolvency
5 of the beer distributor;

6 3. The revocation or suspension of, or the failure to renew for
7 a period of more than fourteen (14) days, a beer distributor's
8 state, local or federal license or permit to sell beer in this
9 state;

10 4. The beer distributor has been convicted of a felony that, in
11 the brewer's sole judgment, adversely affects the goodwill of the
12 beer distributor or brewer;

13 5. A beer distributor has been convicted of, found guilty of or
14 pled guilty or nolo contendere to, a charge of violating a law or
15 regulation of the United States or of this state if it materially
16 and adversely affects the ability of the beer distributor or brewer
17 to continue to sell its beer in this state;

18 6. Any attempted transfer of ownership of the beer distributor,
19 stock of the beer distributor or stock of any parent corporation of
20 the beer distributor, or any change in the beneficial ownership or
21 control of any entity having control of the beer distributor,
22 without obtaining the prior written approval of the brewer, which
23 may not be unreasonably withheld, except as may otherwise be
24 permitted pursuant to a written agreement between the parties;

1 7. Fraudulent conduct in the beer distributor's dealings with
2 the brewer of beer, including the intentional sale of beer outside
3 the brewer's established quality standards;

4 8. Cessation of the beer distributor to conduct business for
5 five (5) consecutive business days, unless conducting the business
6 is prevented or rendered impractical due to events beyond the
7 distributor's reasonable control as a result of an act of God, an
8 insured casualty, war or a condition of national, state or local
9 emergency; or

10 9. Any sale of beer, directly or indirectly, to customers
11 located outside the territory assigned to the beer distributor by
12 the brewer unless expressly authorized by the brewer.

13 Provided, the beer distributor shall have the opportunity to
14 sell the brewer's brands for one hundred twenty (120) days after
15 termination in accordance with the distributor agreement.

16 D. The brewer shall have the right to terminate an agreement
17 with a beer distributor at any time by giving the beer distributor
18 at least ninety-days' written notice by certified mail, return
19 receipt requested; provided, the brewer shall give a similar notice
20 to all other beer distributors in all other states who have entered
21 into the same distributor agreement with the brewer.

22 E. If a particular brand of beer is transferred by purchase or
23 otherwise from a brewer to a successor brewer, the following shall
24 occur:

1 1. The successor brewer shall become obligated to all of the
2 terms and conditions of the agreement in effect on the date of
3 succession. This subsection applies regardless of the character or
4 form of the succession. A successor brewer has the right to
5 contractually require its beer distributor to comply with
6 operational standards of performance, if the standards are uniformly
7 established for all of the successor brewer's distributors. A
8 successor brewer may, upon written notice, terminate its agreement,
9 in whole or in part, with a beer distributor of the brewer it
10 succeeded, for the purpose of transferring the distribution rights
11 in the beer distributor's territory to a new beer distributor,
12 provided that the successor beer distributor first pays to the
13 existing beer distributor the fair market value of the existing
14 distributor's business with respect to the terminated brand or
15 brands;

16 2. If the successor brewer decides to terminate its agreement
17 with the existing beer distributor for purposes of transfer, the
18 successor brewer shall notify the existing beer distributor in
19 writing of the successor brewer's intent not to appoint the existing
20 beer distributor for all or part of the existing beer distributor's
21 territory. The successor brewer shall mail the notice of
22 termination by certified mail, return receipt requested, to the
23 existing beer distributor. The successor brewer shall include in
24

1 the notice the names, addresses and telephone numbers of the
2 successor beer distributor or distributors;

3 3. a. the successor beer distributor shall negotiate with
4 the existing beer distributor to determine the fair
5 market value of the existing beer distributor's right
6 to distribute in the existing beer distributor's
7 territory. The successor beer distributor and the
8 existing beer distributor shall negotiate the fair
9 market value in good faith, and

10 b. the existing beer distributor shall continue to
11 distribute in good faith until payment of the
12 compensation agreed to under subparagraph a of this
13 paragraph, or awarded under paragraph 4 of this
14 subsection, is received; and

15 4. a. if the successor beer distributor and the existing
16 beer distributor fail to reach a written agreement on
17 the fair market value within thirty (30) days after
18 the existing beer distributor receives the notice
19 required pursuant to paragraph 2 of this subsection,
20 the successor beer distributor or the existing beer
21 distributor shall send a written notice to the other
22 party requesting arbitration pursuant to the Uniform
23 Arbitration Act, Part 2 of Article 22 of Title 13,
24 C.R.S. Arbitration shall be held for the purpose of

1 determining the fair market value of the existing beer
2 distributor's right to distribute in the existing beer
3 distributor territory,

4 b. notice of intent to arbitrate shall be sent, as
5 provided in subparagraph a of this paragraph, not
6 later than forty (40) days after the existing beer
7 distributor receives the notice required pursuant to
8 paragraph 2 of this subsection. The arbitration
9 proceeding shall conclude not later than sixty (60)
10 days after the date the notice of intent to arbitrate
11 is mailed to a party, unless this time is extended by
12 mutual agreement of the parties and the arbitrator,

13 c. any arbitration held pursuant to this subsection shall
14 be conducted in a city within this state that:

15 (1) is closest to the existing beer distributor, and

16 (2) has a population of more than twenty thousand
17 (20,000) people,

18 d. any arbitration held pursuant to this paragraph shall
19 be conducted before one impartial arbitrator to be
20 selected by the American Arbitration Association or
21 its successor. The arbitration shall be conducted in
22 accordance with the rules and procedures of the
23 Uniform Arbitration Act, Part 2 of Article 22 of Title
24 13, C.R.S.,

- 1 e. an arbitrator's award in any arbitration held pursuant
2 to this paragraph shall be monetary only and shall not
3 enjoin or compel conduct. Any arbitration held
4 pursuant to this paragraph shall be in lieu of all
5 other remedies and procedures,
- 6 f. the cost of the arbitrator and any other direct costs
7 of an arbitration held pursuant to this paragraph
8 shall be equally divided by the parties engaged in the
9 arbitration. All other costs shall be paid by the
10 party incurring them,
- 11 g. the arbitrator in any arbitration held pursuant to
12 this paragraph shall render a written decision not
13 later than thirty (30) days after the conclusion of
14 the arbitration, unless this time is extended by
15 mutual agreement of the parties and the arbitrator.
16 The decision of the arbitrator is final and binding on
17 the parties. The arbitrator's award may be enforced
18 by commencing a civil action in any court of competent
19 jurisdiction. Under no circumstances may the parties
20 appeal the decision of the arbitrator,
- 21 h. an existing beer distributor or successor beer
22 distributor who fails to participate in the
23 arbitration hearings in any arbitration held pursuant
24 to this paragraph waives all rights the existing beer

1 distributor or successor beer distributor would have
2 had in the arbitration and is considered to have
3 consented to the determination of the arbitrator, and
4 i. if the existing beer distributor does not receive
5 payment from the successor beer distributor of the
6 settlement or arbitration award required under
7 paragraph 2 or 3 of this subsection within thirty (30)
8 days after the date of the settlement or arbitration
9 award:

10 (1) the existing beer distributor shall remain the
11 beer distributor in the existing beer
12 distributor's territory to at least the same
13 extent that the existing beer distributor
14 distributed the beer immediately before the
15 successor brewer acquired rights to the brand,
16 and

17 (2) the existing beer distributor is not entitled to
18 the settlement or arbitration award.

19 F. 1. In addition to termination rights that may be set forth
20 in a distributor agreement, a small brewer who manufactures less
21 than twenty-five thousand barrels of beer annually may terminate a
22 distributor agreement with any beer distributor provided that, prior
23 to the effective date of the termination, the small brewer pays the
24

1 beer distributor the fair market value of the distribution rights
2 which will be lost or diminished by reason of the termination.

3 2. If such small brewer and beer distributor cannot mutually
4 agree to the fair market value of the applicable distribution rights
5 lost or diminished by reason of the termination, then the brewer
6 shall pay the beer distributor a good faith estimate of the fair
7 market value of the applicable distribution rights.

8 3. If the beer distributor being terminated under paragraph 2
9 of this subsection disputes that the payment made by the small
10 brewer was less than the fair market value of the distribution
11 rights, then the beer distributor may within forty-five (45) days of
12 termination submit the question of fair market value of the
13 applicable distribution rights lost or diminished by reason of the
14 termination to binding arbitration before a panel of three neutral
15 arbitrators appointed in accordance with the commercial arbitration
16 rules of the American Arbitration Association, which panel shall
17 determine by majority decision whether the small brewer's payment
18 meets the requirements of paragraph 2 of this subsection.

19 4. If the arbitration panel rules that the payment made by the
20 small brewer to the beer distributor upon termination was less than
21 the fair market value of distribution rights lost or diminished by
22 reason of the termination, then the small brewer must pay the beer
23 distributor the difference between the payment made to the beer
24 distributor and the determined fair market value plus interest.

1 5. If the arbitration panel rules that the payment made by the
2 small brewer to the beer distributor upon termination was more than
3 the fair market value of distribution rights lost or diminished by
4 reason of the termination, then the beer distributor must pay the
5 small brewer the difference between the payment made to the beer
6 distributor and the determined fair market value, plus interest.

7 6. All arbitration fees and expenses shall be equally divided
8 among the parties to the arbitration, except if the arbitration
9 panel determines that the small brewer's payment upon termination
10 was not a good-faith estimate of the fair market value, then the
11 panel may award up to one hundred percent (100%) of the arbitration
12 costs to the small brewer.

13 G. 1. Any beer distributor or brewer who is aggrieved by a
14 violation of any provision of subsections B and D of this section
15 shall be entitled to recovery of damages caused by the violation.
16 Except for a dispute arising under subsection E of this section,
17 damages shall be sought in a civil action in any court of competent
18 jurisdiction.

19 2. Any dispute arising under subsections B and D of this
20 section may also be settled by such dispute resolution procedures as
21 may be provided by a written agreement between the parties.

22 H. Nothing in this section shall be construed to limit or
23 prohibit good-faith settlements voluntarily entered into by the
24 parties.

1 I. Nothing in this section shall be construed to give a beer
2 distributor any right to compensation if an agreement with the beer
3 distributor is terminated by a brewer pursuant to subsections B, C
4 and D of this section.

5 J. No brewer shall require any beer distributor to waive
6 compliance with any provision of the Oklahoma Alcoholic Beverage
7 Control Act.

8 K. No brewer shall charge or accept, and no beer distributor
9 shall pay or provide, any money, property, gratuity, rebate, free
10 goods, shipping charges different than those charged for all beer
11 distributors, allowances, thing of value or inducement from a beer
12 distributor in exchange for the brewer entering into a distributor
13 agreement with the beer distributor. However, a brewer who also
14 holds a beer distributor license and desires to sell all or a
15 portion of its beer distribution rights and business, or a holder of
16 small brewer license who desires to change its election from self-
17 distribution to the use of a distributor agreement may accept a
18 payment for the fair market value of its existing and established
19 distribution business in the subject territory, provided such small
20 brewer has held the self-distribution license for at least twelve
21 (12) months prior to the change in election.

22 L. This section shall apply to any agreement entered into and
23 any renewals, extensions, amendments or conduct constituting a
24

1 modification of a distributor agreement by a brewer or cider
2 manufacturer existing on or after the effective date of this act.

3 M. Where a cider manufacturer distributes cider through a beer
4 distributor, the rights and obligations of the cider manufacturer,
5 the distributor, a successor cider manufacturer and a successor
6 distributor shall be the same as the rights and obligations provided
7 in this section for a brewer, beer distributor, successor brewer and
8 successor beer distributor.

9 SECTION 17. AMENDATORY Section 82, Chapter 366, O.S.L.
10 2016 (37A O.S. Supp. 2018, Section 3-112), is amended to read as
11 follows:

12 Section 3-112. The operation and maintenance of a brewpub is
13 subject to the following conditions:

14 1. No person shall be permitted to own or operate a brewpub
15 without first paying the required fees set forth in Section 13 of
16 this act and obtaining a proper brewpub license from the ABLE
17 Commission in the manner provided in the Oklahoma Alcoholic Beverage
18 Control Act;

19 2. Each brewpub licensee shall comply with all other applicable
20 state and local license and permit requirements; and

21 3. In order to qualify for a brewpub license, a brewer or
22 manufacturer must meet the definition of a small brewer.

23
24

1 SECTION 18. AMENDATORY Section 85, Chapter 366, O.S.L.
2 2016 (37A O.S. Supp. 2018, Section 3-115), is amended to read as
3 follows:

4 Section 3-115. A. To assure and control quality, a beer
5 distributor or a holder of a small brewer self-distribution license
6 or brewpub self-distribution license, at the time of a regular
7 delivery, may withdraw with the permission of the retailer, a
8 quantity of beer or cider in undamaged original packaging from the
9 retailer's stock if:

10 1. The beer distributor or holder of a small brewer self-
11 distribution license or brewpub self-distribution license replaces
12 the stock with beer or cider of identical, ~~equivalent value~~ brands,
13 quantities, packaging and alcohol by volume as the beer or cider
14 withdrawn; or

15 2. The stock is withdrawn before the date, or immediately after
16 the date, considered by the brewer of the product to be the date the
17 product becomes inappropriate for sale to a consumer.

18 B. The provisions of this section shall not apply to beer or
19 cider that:

20 1. Has suffered damage at the retail licensee's location,
21 regardless of the date upon which the product becomes inappropriate
22 for sale to a consumer. Beer distributors, small brewer self-
23 distributors and brewpub self-distributors are prohibited from
24 giving a refund for or replacing beer or cider that was damaged

1 while in the possession of the retail licensee. Retail licensees
2 are prohibited from requesting or requiring the beer distributor,
3 small brewer self-distributor and brewpub self-distributor to remove
4 such damaged product as a condition of continued business with the
5 retail licensee; or

6 2. Has a date for recommended use that expired prior to October
7 1, 2018. Retail licensees and brewers are prohibited from
8 requesting or requiring the beer distributor, small brewer self-
9 distributor and brewpub self-distributor to remove such expired beer
10 or cider as a condition of continued business with the retail
11 licensee or brewer.

12 C. A consignment sale of beer is not authorized under this
13 section.

14 SECTION 19. AMENDATORY Section 86, Chapter 366, O.S.L.
15 2016, as amended by Section 17, Chapter 364, O.S.L. 2017 (37A O.S.
16 Supp. 2018, Section 3-116), is amended to read as follows:

17 Section 3-116. A. Any manufacturer or subsidiary of a
18 manufacturer who markets its products solely through a subsidiary or
19 subsidiaries, a distiller, rectifier, bottler, winemaker or importer
20 of alcoholic beverages, bottled or made in a foreign country, either
21 within or without this state, may sell such brands or kinds of
22 alcoholic beverages to every licensed wine and spirits wholesaler
23 who desires to purchase the same, on the same price basis and
24 without discrimination or inducements, and shall further be required

1 to sell such beverages only to those persons licensed as wine and
2 spirits wholesalers.

3 B. The provisions of subsection A of this section shall not
4 apply to a brewer except as otherwise stated herein. In the event a
5 brewer, who has entered into territorial distribution agreements
6 with beer distributors in this state, markets wine and spirits
7 products in this state either itself or through a subsidiary or
8 affiliate, then such brewer, subsidiary, or affiliate may elect to
9 designate beer distributors, with whom it has entered into
10 territorial distribution agreements, as its designated wholesalers
11 for any wine and spirit products to be sold by the brewer,
12 subsidiary or affiliate within said beer distributors' existing
13 territories, provided such beer distributors must also hold a wine
14 and spirits wholesaler license. In such event, the beer
15 distributors shall be deemed designated wholesalers for the
16 territory with respect to the designated products. Provided, in the
17 event a beer distributor has not obtained a wine and spirits license
18 or has elected not to sell wine and spirits in its respective
19 territory, then the brewer, subsidiary or affiliate may extend the
20 territory of an existing beer distributor, with whom it has entered
21 into a territorial distribution agreement and who holds a wine and
22 spirits wholesaler license, for said territory.

23 C. No manufacturer shall require a wine and spirits wholesaler
24 ~~or beer distributor~~ to purchase any alcoholic beverages or any

1 goods, wares or merchandise as a condition to the wine and spirits
2 wholesaler ~~or beer distributor~~ obtaining or being entitled to
3 purchase any alcoholic beverages.

4 Violation of this section shall be a misdemeanor. Conviction
5 hereunder shall automatically revoke the violator's license.

6 D. In the event a manufacturer or nonresident seller has not
7 designated a ~~wine and spirits wholesaler~~ designated wholesaler to
8 sell its ~~product~~ products in the state, the ~~product~~ nondesignated
9 products shall be posted in accordance with the following:

10 1. On the first business day of each month, the manufacturer
11 shall post with the ABLE Commission the price of all wine and
12 spirits it proposes to offer for sale to licensed wine and spirit
13 wholesalers in this state. All prices shall become effective on the
14 first business day of the following month and shall remain in effect
15 and unchanged for a period of not less than one (1) month. The
16 posting shall be submitted on a form approved by the ABLE Commission
17 and shall identify the brand, size, alcohol content and price of
18 each item intended to be offered for sale. No change or
19 modification of the posted price shall be permitted except upon
20 written permission from the ABLE Commission based on good cause
21 shown;

22 2. When a new item is registered, or an old item is
23 discontinued, or any change is made by a manufacturer or nonresident
24 seller as to price, age, proof, label or type of bottle of any item

1 offered for sale in this state, such new item, discontinued item or
2 change in price, age, proof, label or type of bottle of any item
3 shall be listed separately on the cover page of the price schedule
4 and, in the case of prices changed, shall reflect both the old and
5 the new price of the item changed. All new items and changes as to
6 age, proof, label or type of bottle in which any item is offered for
7 sale shall first be submitted in writing to the ABLE Commission for
8 approval under such requirements as it may deem proper. Approval or
9 disapproval of price changes shall not be required if filed in
10 conformity with the provisions of this subsection.

11 a. In addition to the foregoing requirements, the
12 manufacturer shall, at the same time, on regular forms
13 provided by the ABLE Commission, re-register all items
14 of alcoholic beverage which the manufacturer had
15 registered and offered for sale in this state during
16 the previous price period.

17 b. A short form of price posting may be permitted by the
18 ABLE Commission for any price period in which no new
19 item is offered or old item discontinued, or change is
20 made in the price, age, proof, label or type of bottle
21 of any item offered by any manufacturer. Such short
22 form shall contain only such statements as the
23 Director may require or permit;

24

1 3. The brand name, size, proof and type of alcoholic beverages
2 must be shown on each container sold in this state;

3 4. No brand of alcoholic beverage shall be listed on a price
4 list or posting in more than one place, or offered for sale by more
5 than one method, or at more than one price, except as provided
6 hereafter:

7 a. a manufacturer who has posted F.O.B. prices from a
8 foreign shipping point shall also list the same
9 item(s) at an F.O.B. point within the continental
10 United States. Only one United States F.O.B. point
11 shall be permitted, and

12 b. a manufacturer may list on their price list or posting
13 an item of specific size that may be packaged in more
14 than one type or design container, provided that the
15 containers being offered have been approved by the
16 ABLE Commission;

17 5. The manufacturer shall sell to the wine and spirits
18 wholesalers all items of wine and spirits at the current posted
19 price in effect on the date of the shipment as shown on the
20 manifest, bill of lading or invoice;

21 6. A full and correct copy of each said price registration
22 shall be transmitted to wine and spirits wholesalers on the same day
23 such prices are filed with or mailed to the ABLE Commission. Proof
24

1 of such mailing or delivery shall be furnished the ABLE Commission
2 by the manufacturer with the price registration or upon request;

3 7. The sale, or offer to sell, of any item of alcoholic
4 beverage by a manufacturer to a wine and spirits wholesaler at a
5 price not in compliance with the price posted with the ABLE
6 Commission may be deemed a violation; and

7 8. This subsection shall not apply to a manufacturer that has
8 designated a wine and spirits wholesaler to sell its product in the
9 state or a brewer who has appointed a beer distributor as a
10 designated wholesaler pursuant to subsection B of Section 3-116 of
11 this title, with respect to designated products.

12 SECTION 20. AMENDATORY Section 18, Chapter 364, O.S.L.
13 2017 (37A O.S. Supp. 2018, Section 3-116.1), is amended to read as
14 follows:

15 Section 3-116.1 A. In the event a manufacturer has not
16 designated a wine and spirits wholesaler, or a brewer has not
17 appointed a beer distributor as a designated wholesaler pursuant to
18 subsection B of Section 3-116 of this title, to sell its product in
19 the state, then every wine and spirits wholesaler that sells that
20 product shall comply with the following posting requirements:

21 1. All wine and spirits wholesalers who choose to sell the
22 ~~nondesignated product~~ Nondesignated Product shall file with the ABLE
23 Commission on the fifteenth day of each posting month a proposed
24 category percentage markup. A percentage markup shall be defined as

1 a percentage of increase or decrease in relation to the wholesaler
2 laid-in-cost for all items in each category. The percentage does
3 not have to be the same for all categories, but in the original
4 posting the percentage shall be the same for all items in the same
5 category;

6 2. The proposed markups shall be computed by percentage in the
7 four categories: Spirits, Cordials and Specialties, Wines-Domestic
8 and Wines-Imported. In reporting to the ABLE Commission, the
9 proposed markups shall be set forth in the following categories and
10 order:

- 11 a. Category 1 - Spirits: Straights, Blends, Bonds, Corn,
12 Rye, Scotch, Canadian, Irish, Vodka, Gin, Rum, Brandy
13 Alcohol and Tequila,
- 14 b. Category 2 - Cordials and Specialties: Cocktails,
15 Cordials, Domestic and Imported and Miscellaneous
16 Specialties,
- 17 c. Category 3 - Wines-Domestic: Vermouth American,
18 Fortified American, Light American and Champagne
19 American, and
- 20 d. Category 4 - Wines-Imported: Vermouth Imported,
21 Fortified Imported, Light French, Light German, Light
22 Other Imported and Champagne Imported;

23 3. When a wine and spirits wholesaler desires to charge for
24 expenses incurred in handling of individual bottles in fractional

1 cases, or for transportation of their alcoholic beverage to persons
2 licensed to purchase the same, the wine and spirits wholesaler shall
3 on the fifteenth day of each posting month include with its proposed
4 percentage posting the separate amounts, if any, to be charged for
5 bottle handling and the amount of transportation, respectively, to
6 be charged per case;

7 4. The proposed posting by the wine and spirits wholesaler
8 shall list the percentage posting, and the handling and
9 transportation cost without discrimination to all licensees
10 regardless of their distance from the wine and spirits wholesaler's
11 warehouse;

12 5. The ABLE Commission shall immediately upon receipt of all
13 proposed category percentage postings, prepare a summation of the
14 proposal and disseminate an electronic copy to all wine and spirits
15 wholesalers. The summation shall contain the proposed percentage
16 posting for each category, including proposed transportation charges
17 as submitted by each wine and spirits wholesaler;

18 6. After filing the report required by this subsection, any and
19 all wine and spirits wholesalers shall be permitted to register on
20 or before the twenty-fifth day of each posting month an adjusted
21 price. The adjusted price means percentage or individual item
22 prices reported and registered by a wine and spirits wholesaler on
23 or before the twenty-fifth day of the posting month in response to a
24 lower percentage reported and registered by a competitor on the

1 fifteenth day of the month. The adjusted price shall be no lower
2 than the lowest percentage posted on the fifteenth day of said month
3 by any wine and spirits wholesaler;

4 7. The adjusted price posted by a wine and spirits wholesaler
5 in response to the lowest percentage posted by any wine and spirits
6 wholesaler may, but need not be, posted in terms of a percentage
7 and, if not so stated, shall state the price at which the wine and
8 spirits wholesaler proposes to sell each individual item or size of
9 item which he proposes to offer for sale during the posting period.
10 The price postings, except for unmodified percentage markups, shall
11 describe each item by brand, size, age, type and proof. Wines and
12 champagnes shall reflect the alcoholic contents thereof;

13 8. The percentage markup utilized by a wine and spirits
14 wholesaler in calculating its adjusted prices may be at any level
15 between its originally posted percentage markup and the lowest
16 percentage markup originally posted by any other wine and spirits
17 wholesaler, but may not be above its original posting or below the
18 lowest percentage posted by any wine and spirits wholesaler. Any
19 fraction within four (4) decimals in determining final prices of
20 bottles shall be raised to the next higher cent;

21 9. Each wine and spirits wholesaler may, upon the twenty-fifth
22 day of the posting month, adjust his transportation and handling
23 charges to a level no lower than that of a competitor or higher than
24 its initial proposal on the fifteenth day of the posting month.

1 Such bottle handling and transportation charge shall be in effect
2 for the duration of the price posting which it accompanies.

3 Provided, that if a licensee shall order any item in full case lots
4 and the wine and spirits wholesaler does not have in inventory such
5 item in full case lots, no bottle handling charge may be assessed to
6 the licensee for the partial case;

7 10. All wine and spirits wholesalers shall, on the same date of
8 filing an adjusted price posting with the ABLE Commission, transmit
9 electronically a copy of its adjusted prices to each wine and
10 spirits wholesaler in the state;

11 11. A wine and spirits wholesaler may include a minimum order
12 charge of no less than One Dollar (\$1.00) for any order of alcoholic
13 beverages to a retail, mixed beverage, caterer or special event
14 licensee that does not exceed the amount that such wholesaler
15 designates as a minimum order in his proposed price posting. The
16 minimum charge, if it is more than One Dollar (\$1.00), and the
17 amount of the minimum order shall be included in the price posting;

18 12. All price postings, as adjusted, shall become effective on
19 the first day of the following month and remain in effect for a
20 period of two (2) months. No other charge may be assessed by the
21 wholesaler to the licensee except those expressly authorized by the
22 provisions of the Oklahoma Alcoholic Beverage Control Act or the
23 rules of the ABLE Commission;

24

1 13. A price posting on a new item not previously stocked by a
2 wine and spirits wholesaler shall be filed with the ABLE Commission
3 prior to offering for sale, but no such item shall be listed at a
4 lower price than is then, or will be, in effect during the price
5 period for which the new item is filed, and within the percentage in
6 the proper category of said wine and spirits wholesaler. In the
7 event of a new item posting, mailings to wine and spirits
8 wholesalers and those licensed to purchase wine and spirits in the
9 state, as herein required, shall be sent on the same date as the
10 postings;

11 14. When a wine and spirits wholesaler discontinues an item, or
12 does not have an item in its warehouse or on order, the item shall
13 be deleted from its price posting. When or if the item is restocked
14 or replaced in the inventory of the wine and spirits wholesaler, it
15 shall be reentered into the price postings as would a new item;

16 15. The sale of or the offer to sell alcoholic beverages at the
17 prices quoted in such price posting before the same is in force and
18 effect shall be grounds for the suspension or revocation of the wine
19 and spirits wholesaler's license if the new price varies from the
20 price then in effect; and

21 16. The provisions of this section are severable, and if any
22 provisions of the same shall be void, the decision of the court so
23 holding shall not affect or impair the remaining parts or provisions
24 thereof.

1 B. This section shall not apply to products that have been
2 designated by a manufacturer for distribution by a wine and spirits
3 wholesaler or by a brewer for distribution by a beer distributor
4 pursuant to subsection B of Section 3-116 of this title in the
5 state.

6 SECTION 21. AMENDATORY Section 19, Chapter 364, O.S.L.
7 2017 (37A O.S. Supp. 2018, Section 3-116.2), is amended to read as
8 follows:

9 Section 3-116.2 A. In the event a manufacturer has designated
10 a wine and spirits wholesaler or a brewer has designated a beer
11 distributor pursuant to subsection B of Section 3-116 of this title
12 to sell its product in the state, the wine and spirits wholesaler
13 shall comply with the following posting requirements: The wine and
14 spirits wholesaler or beer distributor appointed pursuant to
15 subsection B of Section 3-116 of this title shall submit its line-
16 item price posting for that product no later than the fifteenth day
17 of each month. If the fifteenth day of the month falls on a
18 Saturday, Sunday or a holiday then the wine and spirits wholesaler
19 shall submit its price posting on the next business day. The price
20 posting submitted by the wine and spirits wholesaler shall list the
21 line-item price, handling cost, transportation cost and any other
22 costs that may be associated with the sale or delivery of that item.
23 All prices shall become effective on the first business day of the
24 month following posting and shall remain in effect and unchanged in

1 one-month increments. No change or modification of the posted price
2 shall be permitted except upon written permission from the ABLE
3 Commission based on good cause shown.

4 B. This section shall not apply unless a product has been
5 designated by a manufacturer for distribution by a single wine and
6 spirits wholesaler in the state or by a brewer for distribution by a
7 beer distributor pursuant to subsection B of Section 3-116 of this
8 title.

9 SECTION 22. AMENDATORY Section 87, Chapter 366, O.S.L.
10 2016 (37A O.S. Supp. 2018, Section 3-117), is amended to read as
11 follows:

12 Section 3-117. A. A retailer may offer for sale and sell
13 alcoholic beverages which are packaged or are to be packaged with
14 nonalcoholic promotional items, if such packaging and all
15 nonalcoholic promotional items are provided by the manufacturer or
16 brewer or agent of the manufacturer or brewer at the expense of the
17 manufacturer or brewer or agent of the manufacturer or brewer,
18 regardless of where such packages are assembled.

19 B. The manufacturer or brewer or agent of the manufacturer or
20 brewer may provide such packaging and any nonalcoholic promotional
21 items to the retailer at the retailer's premises, or otherwise, and
22 may deliver such packaging and all nonalcoholic promotional items
23 provided by the manufacturer or brewer or agent to the retailer by
24 means of common carrier, or otherwise, at no expense to the

1 retailer, for the retailer to incorporate the alcoholic beverage
2 product of the manufacturer or brewer into the manufacturer's or
3 brewer's packaging or with such promotional items.

4 C. The manufacturers and brewers of alcoholic beverages,
5 through their agents, must make access to the packaging for such
6 alcoholic beverages with nonalcoholic promotional items available
7 equally to retailers in this state. Such access to the promotional
8 packaging is subject to the reasonable supplies of such packaging
9 and subject to the terms of the manufacturer's or brewer's
10 promotion. Such access to the manufacturer's or brewer's packaging
11 by the retailers shall be commensurate to the needs of the retailers
12 based on the stock of the manufacturer's or brewer's product carried
13 by the retailer. The manufacturers and brewers shall only be
14 required to carry reasonable supplies of such promotional packages
15 and shall make a good faith effort to ratably distribute such
16 packaging or items to those retailers who desire such packaging or
17 items.

18 SECTION 23. AMENDATORY Section 89, Chapter 366, O.S.L.
19 2016 (37A O.S. Supp. 2018, Section 3-119), is amended to read as
20 follows:

21 Section 3-119. It shall be unlawful for any manufacturer,
22 brewer, wine and spirits wholesaler, beer distributor or person
23 authorized to sell alcoholic beverages to a wholesaler, or any
24 employee, officer, director, stockholder owning fifteen percent

1 (15%) or more of the stock, any type of partner, manager, member or
2 agent thereof, to directly or indirectly:

3 1. Have any financial interest in any premises upon which any
4 alcoholic beverage is sold at retail or in any business connected
5 with the retailing of alcoholic beverages; provided, nothing in this
6 act shall prohibit the operation of a mixed beverage licensee, beer
7 and wine licensee or caterer licensee by an entity which has common
8 owners with the holder of a small brewer license or a brewpub
9 license;

10 2. Lend any money or other thing of value, or to make any gift
11 or offer any gratuity, to any package store, retail wine, retail
12 beer, mixed beverage, beer and wine, public event or bottle club
13 licensee or caterer;

14 3. Guarantee any loan or the repayment of any financial
15 obligation of any retailer, mixed beverage, beer and wine, public
16 event or bottle club licensee or caterer;

17 4. Require any wine and spirits wholesaler, beer distributor,
18 retailer, mixed beverage, on premises beer and wine licensee, public
19 event or caterer to purchase and dispose of any quota of alcoholic
20 beverages, or to require any retailer to purchase any kind, type,
21 size, container or brand of alcoholic beverages in order to obtain
22 any other kind, type, size, container or brand of alcoholic
23 beverages;

24

1 5. Sell to any retailer, mixed beverage, on-premises beer and
2 wine licensee, public event or caterer any alcoholic beverage on
3 consignment, or upon condition, or with the privilege of return, or
4 on any condition other than a bona fide sale; provided, the delivery
5 in good faith, through mistake, inadvertence or oversight, of an
6 alcoholic beverage that was not ordered by a retailer, mixed
7 beverage licensee, on-premises beer and wine licensee, caterer,
8 public event or special event licensee to such licensee shall not be
9 considered a violation of this paragraph, nor shall replacement of
10 breakage that occurred while the alcoholic beverages were in transit
11 from the wholesaler to the licensee, or replacement of product with
12 torn or defective labels, short-filled cases or other defects that
13 make the product unsaleable, as long as the licensee notifies the
14 wine and spirits wholesaler or the beer distributor of the error,
15 breakage or defect in writing within five (5) business days after
16 delivery of the product; or

17 6. Extend credit to any retailer, other than holders of Federal
18 Liquor Stamps on United States government reservations and
19 installations, mixed beverage, public event or on-premises beer and
20 wine licensee or caterer, other than a state lodge located in a
21 county which has approved the retail sale of alcoholic beverages by
22 the individual drink for on-premises consumption. The acceptance of
23 a postdated check or draft or the failure to deposit for collection
24 a current check or draft by the second banking day after receipt

1 shall be deemed an extension of credit. Violation of this section
2 shall be grounds for suspension of the license.

3 SECTION 24. AMENDATORY Section 90, Chapter 366, O.S.L.
4 2016 (37A O.S. Supp. 2018, Section 3-120), is amended to read as
5 follows:

6 Section 3-120. No mixed beverage, beer and wine, caterer,
7 public event or bottle club licensee, partner in any type of
8 partnership, manager or member of a limited liability company,
9 officer, director or stockholder of any corporate licensee owning
10 more than fifteen percent (15%) of the stock shall have any right,
11 title, lien, claim or interest, financial or otherwise in, upon or
12 to the premises, equipment, business or merchandise of any package
13 store, beer distributor, brewer, manufacturer or wholesaler. The
14 provisions of this section shall not prohibit a person who is an
15 officer or director of a fraternal or veteran's organization which
16 is a tax exempt organization under Section 501(c)(8), (10) or (19) of
17 the Internal Revenue Code and which holds a license issued by the
18 ABLE Commission from having a right, title, lien, claim or interest
19 in the premises, equipment, business or merchandise of a package
20 store.

21 SECTION 25. AMENDATORY Section 91, Chapter 366, O.S.L.
22 2016 (37A O.S. Supp. 2018, Section 3-121), is amended to read as
23 follows:

24

1 Section 3-121. No manufacturer, brewer, wine and spirits
2 wholesaler, beer distributor, partner in any type of partnership,
3 manager or member of a limited liability company, or officer,
4 director or stockholder of any nonresident seller, brewer, or
5 manufacturer licensee, owning more than fifteen percent (15%) of the
6 stock shall have any right, title, claim or interest, financial or
7 otherwise in, upon or to the premises, equipment, business or
8 merchandise of any mixed beverage, beer and wine, caterer, public
9 event or bottle club licensee.

10 SECTION 26. AMENDATORY Section 92, Chapter 366, O.S.L.
11 2016 (37A O.S. Supp. 2018, Section 3-122), is amended to read as
12 follows:

13 Section 3-122. A. As used in this section:

14 1. "Interactive entertainment facility" means premises that
15 feature interactive computer and video entertainment attractions,
16 themed merchandise, food and alcoholic beverages; and

17 2. "Main purpose of the business" means that the total gross
18 income derived from interactive entertainment exceeds the total
19 gross income derived from the sale, mixing, or serving of alcoholic
20 beverages.

21 B. Nothing in Sections 89 or 90 of this act shall be construed
22 as prohibiting the issuance, transfer or renewal of any mixed
23 beverage license to any person or corporation with respect to
24 premises that are an integral part of an interactive entertainment

1 facility in which a manufacturer, brewer, nonresident seller,
2 distiller or rectifier has an interest, directly or indirectly, of
3 less than thirty percent (30%) if all the following conditions are
4 met:

5 1. The main purpose of the business conducted within the
6 facility is providing interactive entertainment, not the sale of
7 alcoholic beverages;

8 2. The mixed beverage licensee shall serve other brands of
9 wine, beer and alcoholic beverages in addition to the brands
10 manufactured, produced or distributed by any distiller, rectifier,
11 nonresident seller, brewer or manufacturer that has a direct or
12 indirect interest in the mixed beverage license;

13 3. No more than twenty percent (20%) of the mixed beverage
14 licensee's purchases of alcoholic beverages for sale on its licensed
15 premises shall be products manufactured, produced or distributed by
16 the manufacturer, brewer, distiller, rectifier or nonresident seller
17 that has a direct or indirect interest in the licensed premises;

18 4. The licensee purchases all alcoholic beverages and beer sold
19 on the premises from wholesalers or distributors that are licensed
20 in Oklahoma;

21 5. The distiller, rectifier, nonresident seller, brewer or
22 manufacturer does not control, directly or indirectly, the day-to-
23 day operation of the licensed premises; and

24

1 6. Officers, directors and employees of the distiller,
2 rectifier, nonresident seller, brewer or manufacturer do not serve
3 as officers or directors of the entity operating the licensed
4 premises.

5 SECTION 27. AMENDATORY Section 93, Chapter 366, O.S.L.
6 2016 (37A O.S. Supp. 2018, Section 3-123), is amended to read as
7 follows:

8 Section 3-123. A. It shall be unlawful for any person
9 privileged to sell alcoholic beverages to wholesalers, beer
10 distributors or retailers:

11 1. To discriminate, directly or indirectly, in price between
12 one wine and spirits wholesaler and another wine and spirits
13 wholesaler, when that manufacturer has not designated a single wine
14 and spirits wholesaler, or between one retailer and another retailer
15 purchasing alcoholic beverages bearing the same brand or trade name
16 and of like age and quality, unless otherwise provided by law; or

17 2. To grant, directly or indirectly, any discount, rebate, free
18 goods, allowance or other inducement.

19 B. The ABLE Commission is hereby authorized to promulgate rules
20 which are necessary to carry out the purpose of this section and to
21 prevent its circumvention by offering or giving of any rebate,
22 allowance, free goods, discount or any other thing or service of
23 value; provided, the posting or invoicing of charges per order for
24 processing minimum orders or per case for the handling or repacking

1 of goods by wine and spirits wholesalers and beer distributors for
2 sales in less than full case lots shall not constitute a violation
3 of this section.

4 C. For the violation of any provision of this section or of any
5 rule duly promulgated under this section, the ABLE Commission may
6 suspend or revoke a license as follows:

7 1. For a first offense, not exceeding ten (10) days' suspension
8 of license;

9 2. For a second offense, not exceeding thirty (30) days'
10 suspension of license; and

11 3. For a third offense, the ABLE Commission shall revoke the
12 license.

13 D. For purposes of this section, and except as otherwise
14 provided herein, an inducement shall mean directly or indirectly
15 offering, selling, trading, giving or furnishing any discount, free
16 goods, electronic or nonelectronic refrigerated equipment, fixture,
17 dispensing equipment, outdoor electric or nonelectric advertising
18 structure displaying the retailer's name, permanent shelving,
19 supplies, gifts, prizes, coupons, premiums, retailer rebates,
20 services of any employee including but not limited to affixing price
21 labels or tags, routinely stocking product on shelves other than the
22 stocking of cold boxes, entering information into a retailer's
23 computer system, handling product that was not sold to the retailer
24 by the licensee, paying a slotting fee, selling on consignment,

1 operating a retailer's cash register, conducting janitorial
2 services, decoration, samples of alcoholic beverages, personal
3 property, or other inducement or thing of value to any retail
4 spirit, retail beer, retail wine, beer and wine, mixed beverage,
5 caterer, bottle club or special event, wine and spirits wholesaler
6 or beer distributor, their agents or employees.

7 E. It shall not be deemed an inducement for a brewer, beer
8 distributor, small brewer self-distributor, or brewpub self-
9 distributor to take the following merchandising actions with the
10 permission of the retail licensee:

11 1. Furnish normal point of purchase advertising materials and
12 consumer advertising specialties, as those terms are defined in 27
13 C.F.R. Section 6.84;

14 2. Give or sell product displays, provided that the value of
15 such displays do not exceed the limits and restrictions provided in
16 27 C.F.R. Section 6.83;

17 3. Build product displays, accessible to the customer and
18 without disturbing competitor's products, for the product being
19 delivered by the beer distributor;

20 4. Stock and affix pricing for the product being delivered by
21 the beer distributor, small brewer self-distributor, or brewpub
22 self-distributor or brewed by the brewer;

23 5. Restock, including cleaning the shelf or cooler being reset,
24 and rotate product that has been sold to the retail licensee by the

1 beer distributor, small brewer self-distributor, or brewpub self-
2 distributor, or brewed by the brewer;

3 6. Furnish things of value to a temporary retailer, as defined
4 in 27 C.F.R. Section 6.85;

5 7. Sell equipment or supplies to a retail licensee, provided
6 the equipment or supplies are sold at a price not less than the cost
7 to the industry member who initially purchased them and payment is
8 collected within thirty (30) days of the sale;

9 8. Install dispensing accessories at the retail location;

10 9. Withdraw quantities of beer or cider in undamaged, original
11 packaging from the retail licensee's stock, provided the beer
12 distributor, small brewer self-distributor, brewpub self-
13 distributor, or brewer sold such beer, directly or indirectly, to
14 the retail licensee and such removal is otherwise permitted under
15 Section 3-115 of this title; and

16 10. Provide a recommended shelf plan or shelf schematic to a
17 retail licensee for all or any portion of the inventory sold by the
18 retail licensee.

19 F. It shall not be deemed an inducement for a brewer, beer
20 distributor, small brewer self-distributor or brewpub self-
21 distributor to take the following marketing activities:

22 1. Provide tickets to a retailer for a sporting or
23 entertainment event so long as a representative of the brewer, beer
24

1 distributor, small brewer self-distributor or brewpub self-
2 distributor attends the event with the retailer; or

3 2. Provide food and beverage to a retailer for immediate
4 consumption:

5 a. at a meeting at which the primary purpose is the
6 discussion of business,

7 b. at a convention when the food and beverages are
8 offered to all participants, or

9 c. at a sports or entertainment event that the
10 representatives of brewer, beer distributor, small
11 brewer self-distributor or brewpub self-distributor
12 attend with the retailer.

13 SECTION 28. AMENDATORY Section 101, Chapter 366, O.S.L.
14 2016, as amended by Section 21, Chapter 364, O.S.L. 2017 (37A O.S.
15 Supp. 2018, Section 4-104), is amended to read as follows:

16 Section 4-104. Municipalities are hereby authorized to levy an
17 annual occupational tax for the privilege of operating as a
18 retailer, mixed beverage, beer and wine, caterer, public event or
19 special event licensee, bottle club, manufacturer, brewer, wine and
20 spirits wholesaler or beer distributor, within their respective
21 jurisdictions, not to exceed the state license fee for such
22 licensees; provided, the tax shall be levied only by the
23 municipality in which such licensee has its principal place of
24 business. This section shall not give any municipality any right to

1 determine or regulate the issuance of any license, except as
2 specifically provided for in this section, as the ABLE Commission
3 shall have exclusive authority as to issuance and regulations of
4 licenses. No municipality may prescribe rules or regulations in
5 conflict with or in addition to the statutes of this state or the
6 rules of the ABLE Commission. No licensee shall be held liable for
7 engaging in business otherwise authorized under this title with any
8 other retailer, mixed beverage, beer and wine, caterer, public event
9 or special event licensee, bottle club, manufacturer, brewer, wine
10 and spirits wholesaler or beer distributor solely because such other
11 party has failed to pay any occupational tax due under this section.

12 Municipalities which levy an occupational tax under this section
13 shall make an annual report to the ABLE Commission, covering the
14 fiscal year, showing the number and class of licensees subject to
15 the tax authorized by this section, and the amount of money received
16 therefrom, which information is to be included in the annual report
17 of the ABLE Commission submitted to the Governor, and transmitted to
18 the Legislature.

19 SECTION 29. AMENDATORY Section 111, Chapter 366, O.S.L.
20 2016 (37A O.S. Supp. 2018, Section 5-108), is amended to read as
21 follows:

22 Section 5-108. A. The Oklahoma Tax Commission shall promulgate
23 rules to implement a reporting method of taxing all alcoholic
24

1 beverages sold or delivered in this state to eliminate the use of
2 any type of stamps.

3 ~~B. Every manufacturer or brewer manufacturing or brewing any~~
4 ~~beer in this state, for sale in this state, and every manufacturer~~
5 ~~or brewer outside of the state, shipping any beer into this state,~~
6 ~~shall cause to be printed, upon an affixed label around and upon the~~
7 ~~body of each bottle or upon the top or the lid of each can of such~~
8 ~~beer, a symbol or other designation, approved by the Tax Commission,~~
9 ~~including such information as the Tax Commission may require.~~
10 ~~Brewers shall be required to submit samples of crowns, tops and~~
11 ~~labels to the Tax Commission for approval.~~

12 ~~C.~~ Payment of the excise tax levied by the Oklahoma Alcoholic
13 Beverage Control Act, with respect to beer shall be made by the
14 manufacturer or brewer as to all beer produced by such brewer within
15 the state for sale within this state, and shall be made by the
16 importing manufacturer or beer distributor who is the original
17 consignee of beer manufactured or produced outside of this state as
18 to all beer imported into this state by such importing licensee. It
19 is the duty of each Oklahoma licensed brewer with respect to beer
20 produced by such brewer within this state, and of each Oklahoma
21 licensed beer distributor as to beer produced outside of this state
22 and imported into this state by such beer distributor, to pay the
23 excise tax on such beer to the Oklahoma Tax Commission as
24 hereinafter provided.

1 ~~D.~~ C. Notwithstanding any other provision of law, the tax
2 levied by the Oklahoma Alcoholic Beverage Control Act shall be part
3 of the gross proceeds or gross receipts from the sale of alcoholic
4 beverages, as those terms are defined in paragraph 12 of Section
5 1352 of Title 68 of the Oklahoma Statutes.

6 SECTION 30. AMENDATORY Section 112, Chapter 366, O.S.L.
7 2016 (37A O.S. Supp. 2018, Section 5-109), is amended to read as
8 follows:

9 Section 5-109. The Oklahoma Tax Commission shall have authority
10 to allow credit for or make refunds of any money paid for stamps
11 issued by the Tax Commission in payment of state excise tax by the
12 manufacturer or brewer pursuant to authority granted by the Tax
13 Commission. All applications to the Tax Commission for credit or
14 replacement under the provisions of this section shall be verified
15 by affidavit and all proof and evidence supporting such application
16 shall be made in strict conformity with the rules of the Tax
17 Commission setting forth the requirements in connection with such
18 evidence and application.

19 SECTION 31. AMENDATORY Section 116, Chapter 366, O.S.L.
20 2016 (37A O.S. Supp. 2018, Section 5-113), is amended to read as
21 follows:

22 Section 5-113. A. The Oklahoma Tax Commission, as provided by
23 the Uniform Tax Procedure Code, may issue a distributor permit or
24 wholesaler permit to any person who sells alcoholic beverages to a

1 wine and spirits wholesaler or beer distributor or to any person
2 having a wholesaler license.

3 B. Each wholesaler or beer distributor shall furnish a copy of
4 the wholesaler or distributor permit to manufacturers, brewers,
5 importers, brokers and others who sell alcoholic beverages prior to
6 purchasing alcoholic beverages from a holder of a wholesaler or
7 distributor permit. Each manufacturer, brewer, importer, broker and
8 other who sells alcoholic beverages shall furnish a copy of the
9 wholesaler or distributor permit to the wine and spirits wholesaler
10 or beer distributor prior to selling alcoholic beverages to a
11 wholesaler or distributor.

12 C. Holders of distributor permits or wholesaler permits shall
13 maintain an itemized and verified record for the preceding calendar
14 month of all sales or purchases of alcoholic beverages and shall
15 transmit the verified record to the Tax Commission on or before the
16 tenth day of each month, upon a form prescribed and furnished by the
17 Tax Commission. Permit holders shall maintain records of sales and
18 purchases of alcoholic beverages for three (3) years.

19 SECTION 32. AMENDATORY Section 125, Chapter 366, O.S.L.
20 2016 (37A O.S. Supp. 2018, Section 5-122), is amended to read as
21 follows:

22 Section 5-122. Every manufacturer and brewer, subject to
23 licensing hereunder, shall make and transmit to the Oklahoma Tax
24 Commission, on or before the tenth day of each calendar month, upon

1 a form prescribed and furnished by the Tax Commission, an itemized
2 and verified report, for the preceding calendar month, showing:

3 1. The kind and quantity of all alcoholic beverages
4 manufactured within this state during the month, including:

5 a. the proof of all spirits,

6 b. the kind and quantity of all alcoholic beverages
7 purchased within this state, including the proof of
8 all spirits,

9 c. the kind and quantity of all alcoholic beverages
10 imported into this state during the month, including
11 the proof of all spirits,

12 d. the name and ABLE Commission license number of the
13 person from whom purchased or received,

14 e. the manifest, bill of lading or invoice number of each
15 shipment, which number shall be the number used by the
16 original seller as shown by the basic shipping records
17 which accompanied the shipment,

18 f. the date of receipt of each shipment,

19 g. the name and ABLE Commission license number of the
20 carrier, if transported by carrier; and

21 2. All sales of alcoholic beverages made by such manufacturer
22 or brewer during such calendar month, both within and without
23 Oklahoma, including in detail the kind and quantity of all alcoholic
24 beverages sold, including:

- a. the proof of all spirits, as shown by the invoice covering each such sale,
- b. the invoice number,
- c. the date of each sale,
- d. the name, address and the ABLE Commission license number of the purchaser,
- e. the name and ABLE Commission license number of the carrier, if shipped by carrier, and
- f. such other information as the Tax Commission may require.

SECTION 33. AMENDATORY Section 127, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2018, Section 5-124), is amended to read as follows:

Section 5-124. Every manufacturer, brewer, importer, broker or other who sells alcoholic beverages to a wine and spirits wholesaler, or beer distributor in Oklahoma, after having been issued a license by the ABLE Commission, shall, before manufacturing, purchasing or selling any alcoholic beverage within this state, file with the Oklahoma Tax Commission a bond issued by a surety company authorized to transact business in this state, in such amount as the Tax Commission may fix, but which shall be at least equal to the estimated amount of the tax liability of such licensee for a three-month period, to secure the payment of all excise taxes due from sales of alcoholic beverages to a wholesaler,

1 or beer distributor, under the provisions of the Oklahoma Alcoholic
2 Beverage Control Act. Provided, the amount of the bond for every
3 wholesaler or beer distributor shall be not less than One Thousand
4 Dollars (\$1,000.00). Such bonds shall be payable to the State of
5 Oklahoma and conditioned upon compliance with the excise tax
6 provisions of the Oklahoma Alcoholic Beverage Control Act and the
7 rules of the Tax Commission relating thereto. In lieu of such
8 surety bond, any such manufacturer, brewer, wine and spirits
9 wholesaler, or beer distributor, may deposit cash or negotiable
10 securities, approved by the Tax Commission, in such amount as it may
11 prescribe.

12 SECTION 34. AMENDATORY Section 128, Chapter 366, O.S.L.
13 2016, as amended by Section 4, Chapter 113, O.S.L. 2018 (37A O.S.
14 Supp. 2018, Section 5-125), is amended to read as follows:

15 Section 5-125. A. Every manufacturer, brewer, wine and spirits
16 wholesaler, beer distributor or nonresident seller, selling
17 alcoholic beverages in this state, or selling alcoholic beverages
18 for shipment into this state shall, at the time such sale is made,
19 make and deliver to the purchaser or transporter an invoice, bill of
20 lading, manifest or other document describing such alcoholic
21 beverages, showing:

- 22 1. The date of such sale or delivery;
- 23 2. The name and ABLE Commission license number of the seller;

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1 3. The point of origin of the movement of such alcoholic
2 beverages and the destination of same;

3 4. The kind and quantity and a description of such alcoholic
4 beverages, including the proof of all spirits;

5 5. The name and ABLE Commission license number of the
6 purchaser;

7 6. The sale price; and

8 7. Such other information as the Oklahoma Tax Commission may,
9 by form or rule, require.

10 Every such invoice, bill of lading, manifest or other document
11 describing such alcoholic beverages, except beer, must be identified
12 by consecutive numbers printed upon the invoice or document, and
13 each such seller and purchaser must account for each copy of his or
14 her invoice and each number thereof.

15 B. Every manufacturer, brewer, wine and spirits wholesaler or
16 beer distributor importing into or purchasing in this state any
17 alcoholic beverage, and any retailer purchasing any alcoholic
18 beverage in this state, shall at the time of delivery or acceptance
19 of such alcoholic beverage, demand and receive a proper bill of
20 lading, invoice, manifest or other document, particularly describing
21 such alcoholic beverage and showing the proof of all spirits.

22 C. Every manufacturer, brewer, wine and spirits wholesaler,
23 beer distributor, nonresident seller and retailer shall retain one
24 copy of each invoice, bill of lading, manifest or similar document

1 covering all such sales and purchases by such licensee, as a part of
2 the permanent records of such licensee for a period of at least
3 three (3) years.

4 D. Any person violating any of the provisions of this section,
5 whether acting for himself or herself or as the agent or employee of
6 any licensee hereunder, shall be guilty of a misdemeanor and, upon
7 conviction, shall be punished as provided by law. Any violation of
8 the provisions of this section shall also constitute grounds for the
9 revocation by the ABLE Commission of any license issued under the
10 Oklahoma Alcoholic Beverage Control Act.

11 SECTION 35. AMENDATORY Section 129, Chapter 366, O.S.L.
12 2016 (37A O.S. Supp. 2018, Section 5-126), is amended to read as
13 follows:

14 Section 5-126. Every manufacturer, brewer, wine and spirits
15 wholesaler, beer distributor, nonresident seller, retailer, mixed
16 beverage, caterer, public event and special event licensee shall
17 keep a record of all alcoholic beverages imported, purchased,
18 received, manufactured, produced, sold, delivered or otherwise
19 disposed of, and the amount of all alcoholic beverages on hand, as
20 herein provided. Such records must be kept for a period of at least
21 three (3) years and shall include:

- 22 1. The date;
- 23 2. The number of the invoice, manifest, bill of lading or
24 similar type document; and

1 3. The total amount of alcoholic beverages purchased, imported,
2 received, manufactured, produced, sold, delivered or otherwise
3 disposed of, by such licensee in each transaction.

4 Each such licensee shall keep and maintain such other records in
5 details as the Oklahoma Tax Commission may require.

6 SECTION 36. AMENDATORY Section 135, Chapter 366, O.S.L.
7 2016, as amended by Section 23, Chapter 364, O.S.L. 2017 (37A O.S.
8 Supp. 2018, Section 5-132), is amended to read as follows:

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

16 B. An application for registration of a brand label shall be
17 filed by and fees paid by the manufacturer or brewer of the brand if
18 the manufacturer or brewer is licensed by the ABLE Commission;
19 however, if the brewer or manufacturer is represented by a
20 manufacturer's agent, licensed nonresident seller, wine and spirits
21 wholesaler or beer distributor, then the manufacturer's agent,
22 nonresident seller, wine and spirits wholesaler or beer distributor
23 ~~shall~~ may submit each label for each product the manufacturer or
24 brewer offers for sale in this state, along with payment of the

1 brand registration fee, on behalf of the manufacturer or brewer;
2 provided, the manufacturer or brewer must fully reimburse the
3 manufacturer's agent, licensed nonresident seller, wine and spirits
4 wholesaler or beer distributor for the cost of the brand
5 registration fee within forty-five (45) days of the time the
6 original brand registration fee is paid. Cordials and wines which
7 differ only as to age or vintage year, as defined by such rules,
8 shall be considered the same brand, and those that differ as to type
9 or class may be considered the same brand by the ABLE Commission
10 where consistent with the purposes of this section.

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

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

3 2. Each brand label registered and approved pursuant to this
4 section shall be valid for a term of up to one (1) year, expiring on
5 the June 30 next following registration, and may be renewed for
6 subsequent terms of one (1) year beginning on the July 1 following
7 the initial registration. Brand registration fees for labels
8 registered after July 1 may be prorated through the following June
9 30 on a quarterly basis. The brand registration fee shall not be
10 transferable, unless otherwise allowed by law. A nonresident seller
11 who registered brands prior to the effective date of this act may
12 transfer brand registrations to the brewer or manufacturer that
13 produces those brands, provided the brewer or manufacturer has
14 obtained a license, at no expense to the nonresident seller, brewer
15 or manufacturer.

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

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

1 G. No private labels or control labels shall be approved for
2 sale in this state.

3 SECTION 37. This act shall become effective November 1, 2019.
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5 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated
6 04/15/2019 - DO PASS, As Amended.
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