

An Act

ENROLLED SENATE
BILL NO. 809

By: Coleman of the Senate

and

McEntire and Pittman of the
House

An Act relating to alcoholic beverages; amending 37A O.S. 2021, Section 1-103, as last amended by Section 1 of Enrolled Senate Bill No. 2001 of the 2nd Session of the 59th Oklahoma Legislature, which relates to definitions; defining term; expanding term; amending 37A O.S. 2021, Sections 7-102, as amended by Section 1, Chapter 373, O.S.L. 2022 and 7-103, as amended by Section 2, Chapter 373, O.S.L. 2022 (37A O.S. Supp. 2023, Sections 7-102 and 7-103), which relate to definitions and requirements; modifying definition; allowing certain licensee to participate in curbside pickup or delivery of sealed alcoholic beverages; lowering the age of employee allowed to deliver sealed alcoholic beverage; allowing for sealed alcoholic beverage to be carried out by customer; requiring notification to customer purchasing sealed alcoholic beverage through a drive-through; updating statutory reference; updating statutory language; and providing an effective date.

SUBJECT: Alcoholic beverage sales

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

SECTION 1. AMENDATORY 37A O.S. 2021, Section 1-103, as last amended by Section 1 of Enrolled Senate Bill No. 2001 of the 2nd Session of the 59th Oklahoma Legislature, is amended to read as follows:

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

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

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

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

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

5. "Beer" means any beverage containing more than one-half of one percent (0.50%) of alcohol by volume and obtained by the alcoholic fermentation of an infusion or decoction of barley, or other grain, sugar, malt or similar products. For the purposes of taxation, distribution, sales, and regulation, seltzer shall mean the same as beer as provided in this section. Beer may or may not contain hops or other vegetable products. Beer includes, among other things, beer, ale, stout, lager beer, porter, seltzer, and other malt or brewed liquors, but does not include sake, known as Japanese rice wine;

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

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

Oklahoma Alcoholic Beverage Control Act, shall be construed to refer to a beer distributor;

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

9. "Bottle service" means the sale and provision of spirits in their original packages by a mixed beverage licensee to be consumed in that mixed beverage licensee's club suite;

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

11. "Brand extension" means:

- a. after October 1, 2018, any brand of beer or cider introduced by a manufacturer in this state which either:
 - (1) incorporates all or a substantial part of the unique features of a preexisting brand of the same licensed brewer, or
 - (2) relies to a significant extent on the goodwill associated with the preexisting brand, or
- b. any brand of beer that a brewer, the majority of whose total volume of all brands of beer distributed in this state by such brewer on January 1, 2016, was distributed as low-point beer, desires to sell, introduces, begins selling or theretofore has sold and desires to continue selling a strong beer in this state which either:
 - (1) incorporates or incorporated all or a substantial part of the unique features of a preexisting low-point beer brand of the same licensed brewer, or

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

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

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

14. "Cider" means any alcoholic beverage obtained by the alcoholic fermentation of fruit juice, including but not limited to flavored, sparkling or carbonated cider. For the purposes of the manufacture of this product, cider may be manufactured by either manufacturers or brewers. For the purposes of the distribution of this product, cider may be distributed by either wine and spirits wholesalers or beer distributors;

15. "Club suite" means a designated area within the premises of a mixed beverage licensee designed to provide an exclusive space which is limited to a patron or patrons specifically granted access by a mixed beverage licensee and is not accessible to other patrons of the mixed beverage licensee or the public. A club suite must have a clearly designated point of access for a patron or patrons specifically granted access by the mixed beverage licensee to ensure that persons present in the suite are limited to patrons specifically granted access by the mixed beverage licensee and employees providing services to the club suite;

16. "Cocktail" means a type of mixed beverage as defined in Section 7-102 of this title;

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

~~17.~~ 18. "Convicted" and "conviction" mean and include a finding of guilt resulting from a plea of guilty or nolo contendere, the decision of a court or magistrate or the verdict of a jury, irrespective of the pronouncement of judgment or the suspension thereof;

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

~~19.~~ 20. "Designated wholesaler" means a wine and spirits wholesaler who has been selected by a manufacturer as a wholesaler appointed to distribute designated products;

~~20.~~ 21. "Director" means the Director of the ABLE Commission;

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

~~22.~~ 23. "Distributor agreement" means the written agreement between the distributor and brewer as set forth in Section 3-108 of this title;

~~23.~~ 24. "Drug store" means a person primarily engaged in retailing prescription and nonprescription drugs and medicines;

~~24.~~ 25. "Dual-strength beer" means a brand of beer that, immediately prior to April 15, 2017, was being sold and distributed in this state:

- a. as a low-point beer pursuant to the Low-Point Beer Distribution Act in effect immediately prior to October 1, 2018, and

- b. as strong beer pursuant to the Oklahoma Alcoholic Beverage Control Act in effect immediately prior to October 1, 2018,

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

~~25.~~ 26. "Fair market value" means the value in the subject territory covered by the written agreement with the distributor or wholesaler that would be determined in an arm's length transaction entered into without duress or threat of termination of the distributor's or wholesaler's rights and shall include all elements of value, including goodwill and going-concern value;

~~26.~~ 27. "Good cause" means:

- a. failure by the distributor to comply with the material and reasonable provisions of a written agreement or understanding with the brewer, or
- b. failure by the distributor to comply with the duty of good faith;

~~27.~~ 28. "Good faith" means the duty of each party to any distributor agreement and all officers, employees or agents thereof to act with honesty in fact and within reasonable standards of fair dealing in the trade;

~~28.~~ 29. "Grocery store" means a person primarily engaged in retailing a general line of food, such as canned or frozen foods, fresh fruits and vegetables, and fresh and prepared meats, fish and poultry;

~~29.~~ 30. "Hotel" or "motel" means an establishment which is licensed to sell alcoholic beverages by the individual drink and which contains guest room accommodations with respect to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. For purposes of this section, the existence of other legal relationships as between some occupants and the owner or operator thereof shall be immaterial;

~~30.~~ 31. "Legal newspaper" means a newspaper meeting the requisites of a newspaper for publication of legal notices as prescribed in Sections 101 through 114 of Title 25 of the Oklahoma Statutes;

~~31.~~ 32. "Licensee" means any person holding a license under the Oklahoma Alcoholic Beverage Control Act, and any agent, servant or employee of such licensee while in the performance of any act or duty in connection with the licensed business or on the licensed premises;

~~32.~~ 33. "Low-point beer" shall mean any beverages containing more than one-half of one percent ($1/2$ of 1%) alcohol by volume, and not more than three and two-tenths percent (3.2%) alcohol by weight, including but not limited to beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion by barley or other grain, malt or similar products;

~~33.~~ 34. "Manufacturer" means a distiller, winemaker, rectifier or bottler of any alcoholic beverage (other than beer) and its subsidiaries, affiliates and parent companies;

~~34.~~ 35. "Manufacturer's agent" means a salaried or commissioned salesperson who is the agent authorized to act on behalf of the manufacturer or nonresident seller in this state;

~~35.~~ 36. "Meals" means foods commonly ordered at lunch or dinner and at least part of which is cooked on the licensed premises and requires the use of dining implements for consumption. Provided, that the service of only food such as appetizers, sandwiches, salads or desserts shall not be considered meals;

~~36.~~ 37. "Mini-bar" means a closed container, either refrigerated in whole or in part, or unrefrigerated, and access to the interior of which is:

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

~~37.~~ 38. "Mixed beverage cooler" means any beverage, by whatever name designated, consisting of an alcoholic beverage and fruit or vegetable juice, fruit or vegetable flavorings, dairy products or carbonated water containing more than one-half of one percent (1/2 of 1%) of alcohol measured by volume but not more than seven percent (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is packaged in a container not larger than three hundred seventy-five (375) milliliters. Such term shall include but not be limited to the beverage popularly known as a "wine cooler";

~~38.~~ 39. "Mixed beverages" means one or more servings of a beverage composed in whole or in part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage, beer and wine, caterer, public event, charitable event or special event license; provided, that a beer, cider, or wine mixed with ingredients nonalcoholic in nature including, but not limited to, water, juice, sugar, fruits, or vegetables and sold by a small brewer, brewpub, small farm winery, or winemaker, shall not be considered a mixed beverage so long as such small brewer, brewpub, small farm winery, or winemaker does not also hold an on-premises beer and wine, mixed beverage, caterer, public event, or special event license, if permitted by law;

~~39.~~ 40. "Motion picture theater" means an establishment which is licensed by Section 2-110 of this title to sell alcoholic beverages by the individual drink and where motion pictures are exhibited, and to which the general public is admitted;

~~40.~~ 41. "Nondesigned products" means the brands of wine or spirits offered for sale by a manufacturer that have not been assigned to a designated wholesaler;

~~41.~~ 42. "Nonresident seller" means any person licensed pursuant to Section 2-135 of this title;

~~42.~~ 43. "Retail salesperson" means a salesperson soliciting orders from and calling upon retail alcoholic beverage stores with regard to his or her product;

~~43.~~ 44. "Occupation" as used in connection with "occupation tax" means the sites occupied as the places of business of the

manufacturers, brewers, wholesalers, beer distributors, retailers, mixed beverage licensees, on-premises beer and wine licensees, bottle clubs, caterers, public event and special event licensees;

~~44.~~ 45. "Original package" means any container of alcoholic beverage filled and stamped or sealed by the manufacturer or brewer;

~~45.~~ 46. "Package store" means any sole proprietor or partnership that qualifies to sell wine, beer and/or spirits for off-premises consumption and that is not a grocery store, convenience store or drug store, or other retail outlet that is not permitted to sell wine or beer for off-premises consumption;

~~46.~~ 47. "Patron" means any person, customer or visitor who is not employed by a licensee or who is not a licensee;

~~47.~~ 48. "Person" means an individual, any type of partnership, corporation, association, limited liability company or any individual involved in the legal structure of any such business entity;

~~48.~~ 49. "Premises" means the grounds and all buildings and appurtenances pertaining to the grounds including any adjacent premises if under the direct or indirect control of the licensee and the rooms and equipment under the control of the licensee and used in connection with or in furtherance of the business covered by a license. Provided, that the ABLE Commission shall have the authority to designate areas to be excluded from the licensed premises solely for the purpose of:

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

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

~~49.~~ 50. "Private event" means a social gathering or event attended by invited guests who share a common cause, membership, business or task and have a prior established relationship. For purposes of this definition, advertisement for general public attendance or sales of tickets to the general public shall not constitute a private event;

~~50.~~ 51. "Public event" means any event that can be attended by the general public;

~~51.~~ 52. "Rectifier" means any person who rectifies, purifies or refines spirits or wines by any process (other than by original and continuous distillation, or original and continuous processing, from mash, wort, wash or other substance, through continuous closed vessels and pipes, until the production thereof is complete), and any person who, without rectifying, purifying or refining spirits, shall by mixing (except for immediate consumption on the premises where mixed) such spirits, wine or other liquor with any material, manufactures any spurious, imitation or compound liquors for sale, under the name of whiskey, brandy, rum, gin, wine, spirits, cordials or any other name;

~~52.~~ 53. "Regulation" or "rule" means a formal rule of general application promulgated by the ABLE Commission as herein required;

~~53.~~ 54. "Restaurant" means an establishment that is licensed to sell alcoholic beverages by the individual drink for on-premises consumption and where food is prepared and sold for immediate consumption on the premises;

~~54.~~ 55. "Retail container for spirits and wines" means an original package of any capacity approved by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives;

~~55.~~ 56. "Retailer" means a package store, grocery store, convenience store or drug store licensed to sell alcoholic beverages for off-premises consumption pursuant to a retail spirits license, retail wine license or retail beer license;

~~56.~~ 57. "Sale" means any transfer, exchange or barter in any manner or by any means whatsoever, and includes and means all sales made by any person, whether as principal, proprietor or as an agent,

servant or employee. The term sale is also declared to be and include the use or consumption in this state of any alcoholic beverage obtained within or imported from without this state, upon which the excise tax levied by the Oklahoma Alcoholic Beverage Control Act has not been paid or exempted;

~~57.~~ 58. "Seltzer" means any beverage containing more than one-half of one percent (0.50%) of alcohol by volume and obtained by the alcoholic fermentation of malt, rice, grain of any kind, bran, glucose, sugar, or molasses and combined with carbonated water and other flavoring and labeled as "beer" by the Internal Revenue Code; provided, that seltzer shall not include carbonated beverages mixed with wine or spirits;

~~58.~~ 59. "Short-order food" means food other than full meals including but not limited to sandwiches, soups and salads. Provided, that popcorn, chips and other similar snack food shall not be considered short-order food;

~~59.~~ 60. "Small brewer" means a brewer who manufactures less than sixty-five thousand (65,000) barrels of beer annually pursuant to a validly issued small brewer license hereunder;

~~60.~~ 61. "Small farm wine" means a wine that is produced by a small farm winery with seventy-five percent (75%) or more Oklahoma-grown grapes, berries, other fruits, honey or vegetables;

~~61.~~ 62. "Small farm winery" means a wine-making establishment that does not annually produce for sale more than fifteen thousand (15,000) gallons of wine as reported on the United States Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau, Report of Wine Premises Operations (TTB Form 5120.17);

~~62.~~ 63. "Sparkling wine" means champagne or any artificially carbonated wine;

~~63.~~ 64. "Special event" means an entertainment, recreation or marketing event that occurs at a single location on an irregular basis and at which alcoholic beverages are sold;

~~64.~~ 65. "Spirits" means any beverage other than wine or beer, which contains more than one-half of one percent (1/2 of 1%) alcohol

measured by volume, and obtained by distillation, whether or not mixed with other substances in solution and includes those products known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and fortified wines and similar compounds, but shall not include any alcohol liquid completely denatured in accordance with the Acts of Congress and regulations pursuant thereto;

~~65.~~ 66. "Strong beer" means beer which, prior to October 1, 2018, was distributed pursuant to the Oklahoma Alcoholic Beverage Control Act, Section 1-101 et seq. of this title;

~~66.~~ 67. "Successor brewer" means a primary source of supply, a brewer, a cider manufacturer or an importer that acquires rights to a beer or cider brand from a predecessor brewer;

~~67.~~ 68. "Tax Commission" means the Oklahoma Tax Commission;

~~68.~~ 69. "Territory" means a geographic region with a specified boundary;

~~69.~~ 70. "Wine and spirits wholesaler" or "wine and spirits distributor" means and includes any sole proprietorship or partnership licensed to distribute wine and spirits in this state. The term "wholesaler", as used in the Oklahoma Alcoholic Beverage Control Act, shall be construed to refer to a wine and spirits wholesaler;

~~70.~~ 71. "Wine" means and includes any beverage containing more than one-half of one percent (1/2 of 1%) alcohol by volume and not more than twenty-four percent (24%) alcohol by volume at sixty (60) degrees Fahrenheit obtained by the fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, and includes vermouth and sake, known as Japanese rice wine;

~~71.~~ 72. "Winemaker" means and includes any person or establishment who manufactures for human consumption any wine upon which a license fee and a tax are imposed by any law of this state;

~~72.~~ 73. "Satellite tasting room" means a licensed establishment operated off the licensed premises of the holder of a small farm

winery or winemaker license, which serves wine for on-premises or off-premises consumption; and

~~73.~~ 74. "Straw testing" means the consumption of a de minimis amount of an alcoholic beverage by sanitary means by the holder of an employee license, twenty-one (21) years of age or older, to determine the quality or desired flavor profile of such alcoholic beverage that has been serviced, or is to be served, to a patron.

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

SECTION 2. AMENDATORY 37A O.S. 2021, Section 7-102, as amended by Section 1, Chapter 373, O.S.L. 2022 (37A O.S. Supp. 2023, Section 7-102), is amended to read as follows:

Section 7-102. As used in this act:

1. "Cocktail" or "mixed drink" means any beverage obtained by combining ingredients alcoholic in nature, whether brewed, fermented, or distilled, with ingredients nonalcoholic in nature, such as, but not limited to, fruit juice, lemonade, cream, or a carbonated beverage;

2. "Single-serve wine" means a bottle or sealed container, containing seven (7) fluid ounces, or less, of wine;

3. "Original container" means, for the purposes of ~~this act~~ the Oklahoma Cocktails To Go Act of 2021 only, a container that is filled, sealed and secured with a tamper-evident lid or cap by the original manufacturer of the mixed drink or by a mixed beverage licensee's or caterer licensee's employee at the mixed beverage licensee's or caterer licensee's location;

4. "Sealed container" means a rigid container that contains a mixed drink, is new, has never been used, has a secured lid or cap designed to prevent consumption without removal of the lid or cap and is tamper evident. Sealed container does not include a container with a lid with sipping holes or openings for straws or a container made of plastic, paper or polystyrene foam; and

5. "Tamper evident" means a lid or cap that has been sealed with tamper-evident covers, including, but not limited to, wax dip or heat-shrink wrap.

SECTION 3. AMENDATORY 37A O.S. 2021, Section 7-103, as amended by Section 2, Chapter 373, O.S.L. 2022 (37A O.S. Supp. 2023, Section 7-103), is amended to read as follows:

Section 7-103. A cocktail, mixed drink, or single-serve wine in its original container may be transferred and sold for off-premises consumption if the following requirements are met:

1. The cocktail, mixed beverage, or single-serve wine is transferred within the licensed premises by a curbside pickup or by delivery by an employee of the mixed beverage licensee, mixed beverage/caterer combination licensee, or retail licensee who:

a. is at least ~~twenty-one (21)~~ eighteen (18) years of age, and

b. upon delivery, verifies the age of the person to whom the cocktail is being delivered;

2. If the employee delivering the cocktail, mixed drink, or single-serve wine is not able to safely verify a person's age or level of intoxication upon delivery, the employee shall cancel the sale of alcohol and return the product to the mixed beverage license holder, mixed beverage/caterer combination license holder, or retail license holder;

3. The sealed container is placed in the trunk of the vehicle or, if there is no trunk, in the vehicle's rear compartment that is not readily accessible to the passenger area;

4. In the case of a mixed drink sealed by the mixed beverage or caterer licensee, the sealed container shall be affixed with a label or tag that contains the following information:

a. the cocktail, mixed drink or single-serve wine ingredients, type and name of the alcohol,

- b. the name, license number and address of the mixed beverage licensee or caterer licensee who filled the original container and sold the product,
- c. the volume of the cocktail, mixed drink or single-serve wine in the sealed container, and
- d. verification that the sealed container was filled less than seven (7) days before the date of sale; ~~and~~

5. In the case of a mixed drink in its original container from the original manufacturer of the mixed drink, the Oklahoma-registered label shall not be tampered with, modified, or otherwise changed;

6. In the case of a customer purchasing a cocktail, mixed drink, or single-serve wine from inside the licensed premises as part of a carry out or to-go sale, a customer may carry the sealed container from the licensed premises; and

7. In the case of a customer purchasing a cocktail, mixed drink, or single-serve wine from a drive-through sale, the licensed premises shall inform the customer that the sealed container shall be stored out of reach of the driver's compartment.

SECTION 4. This act shall become effective November 1, 2024.

Passed the Senate the 29th day of May, 2024.

Presiding Officer of the Senate

Passed the House of Representatives the 30th day of May, 2024.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

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

By: _____

Approved by the Governor of the State of Oklahoma this _____

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

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

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

By: _____