

1 **SENATE FLOOR VERSION**
February 27, 2023
2 **AS AMENDED**

3 SENATE BILL NO. 639

By: Coleman of the Senate

4 and

5 Marti of the House

6
7
8 **[alcoholic beverages - definitions - effective date]**
9

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

11 SECTION 1. AMENDATORY 37A O.S. 2021, Section 1-103, is
12 amended to read as follows:

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

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

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

23 3. "Alcoholic beverage" means alcohol, spirits, beer and wine
24 as those terms are defined herein and also includes every liquid or

1 solid, patented or not, containing alcohol, spirits, wine or beer
2 and capable of being consumed as a beverage by human beings;

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

7 5. "Beer" means any beverage containing more than one-half of
8 one percent (0.50%) of alcohol by volume and obtained by the
9 alcoholic fermentation of an infusion or decoction of barley, or
10 other grain, malt or similar products. "Beer" may or may not
11 contain hops or other vegetable products. "Beer" includes, among
12 other things, beer, ale, stout, lager beer, porter and other malt or
13 brewed liquors, but does not include sake, known as Japanese rice
14 wine;

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

17 7. "Beer distributor" means and includes any person licensed to
18 distribute beer for retail sale in the state, but does not include a
19 holder of a small brewer self-distribution license or brewpub self-
20 distribution license. The term "distributor", as used in the
21 Oklahoma Alcoholic Beverage Control Act, shall be construed to refer
22 to a beer distributor;

23 8. "Bottle club" means any establishment in a county which has
24 not authorized the retail sale of alcoholic beverages by the

1 individual drink, which is required to be licensed to keep, mix and
2 serve alcoholic beverages belonging to club members on club
3 premises;

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

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

11 11. "Brand extension" means:

12 a. after October 1, 2018, any brand of beer or cider
13 introduced by a manufacturer in this state which
14 either:

15 (1) incorporates all or a substantial part of the
16 unique features of a preexisting brand of the
17 same licensed brewer, or

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

20 b. any brand of beer that a brewer, the majority of whose
21 total volume of all brands of beer distributed in this
22 state by such brewer on January 1, 2016, was
23 distributed as low-point beer, desires to sell,
24 introduces, begins selling or theretofore has sold and

1 desires to continue selling a strong beer in this
2 state which either:

3 (1) incorporates or incorporated all or a substantial
4 part of the unique features of a preexisting low-
5 point beer brand of the same licensed brewer, or

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

9 12. "Brewer" means and includes any person who manufactures,
10 who is the exclusive broker agent, or the primary source of a
11 national supply representing a person who manufactures outside of
12 the state, for human consumption by the use of raw materials or
13 other ingredients any beer or cider upon which a license fee and a
14 tax are imposed by any law of this state;

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

19 14. "Cider" means any alcoholic beverage obtained by the
20 alcoholic fermentation of fruit juice, including but not limited to
21 flavored, sparkling or carbonated cider. For the purposes of the
22 manufacture of this product, cider may be manufactured by either
23 manufacturers or brewers. For the purposes of the distribution of
24

1 this product, cider may be distributed by either wine and spirits
2 wholesalers or beer distributors;

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

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

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

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

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

4 20. "Director" means the Director of the ABLE Commission;

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

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

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

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

21 a. as a low-point beer pursuant to the Low-Point Beer
22 Distribution Act in effect immediately prior to
23 October 1, 2018, and
24

1 b. as strong beer pursuant to the Alcoholic Beverage
2 Control Act in effect immediately prior to October 1,
3 2018,
4 and continues to be sold and distributed as such on October 1, 2018.
5 Dual-strength beer does not include a brand of beer that arose as a
6 result of a brand extension as defined in this section;

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

13 26. "Good cause" means:

14 a. repeated failure by the distributor to comply with the
15 material and reasonable provisions of a written
16 agreement or understanding with the brewer, or

17 b. failure by the distributor to comply with the duty of
18 good faith;

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

23 28. "Grocery store" means a person primarily engaged in
24 retailing a general line of food, such as canned or frozen foods,

1 fresh fruits and vegetables, and fresh and prepared meats, fish and
2 poultry;

3 29. "Hard seltzer" means any beverage containing more than one-
4 half of one percent (0.50%) of alcohol by volume and obtained by the
5 alcoholic fermentation of grain or sugar and combined with
6 carbonated water and other flavoring and labeled as a "malt
7 beverage" by the United States Department of Treasury Alcohol and
8 Tobacco Tax and Trade Bureau or as beer by the Food and Drug
9 Administration. For the purposes of taxation, distribution, sales,
10 and regulation, hard seltzer shall mean the same as beer as provided
11 in this section; provided, that hard seltzer shall not include
12 carbonated beverages mixed with wine and spirits;

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

21 ~~30.~~ 31. "Legal newspaper" means a newspaper meeting the
22 requisites of a newspaper for publication of legal notices as
23 prescribed in Sections 101 through 114 of Title 25 of the Oklahoma
24 Statutes;

1 ~~31.~~ 32. "Licensee" means any person holding a license under the
2 Oklahoma Alcoholic Beverage Control Act, and any agent, servant or
3 employee of such licensee while in the performance of any act or
4 duty in connection with the licensed business or on the licensed
5 premises;

6 ~~32.~~ 33. "Low-point beer" shall mean any beverages containing
7 more than one-half of one percent (1/2 of 1%) alcohol by volume, and
8 not more than three and two-tenths percent (3.2%) alcohol by weight,
9 including but not limited to, beer or cereal malt beverages obtained
10 by the alcoholic fermentation of an infusion by barley or other
11 grain, malt or similar products;

12 ~~33.~~ 34. "Manufacturer" means a distiller, winemaker, rectifier
13 or bottler of any alcoholic beverage (other than beer) and its
14 subsidiaries, affiliates and parent companies;

15 ~~34.~~ 35. "Manufacturer's agent" means a salaried or commissioned
16 salesperson who is the agent authorized to act on behalf of the
17 manufacturer or nonresident seller in the state;

18 ~~35.~~ 36. "Meals" means foods commonly ordered at lunch or dinner
19 and at least part of which is cooked on the licensed premises and
20 requires the use of dining implements for consumption. Provided,
21 that the service of only food such as appetizers, sandwiches, salads
22 or desserts shall not be considered "meals";

1 ~~36.~~ 37. "Mini-bar" means a closed container, either
2 refrigerated in whole or in part, or nonrefrigerated, and access to
3 the interior of which is:

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

7 ~~37.~~ 38. "Mixed beverage cooler" means any beverage, by whatever
8 name designated, consisting of an alcoholic beverage and fruit or
9 vegetable juice, fruit or vegetable flavorings, dairy products or
10 carbonated water containing more than one-half of one percent (1/2
11 of 1%) of alcohol measured by volume but not more than seven percent
12 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is
13 packaged in a container not larger than three hundred seventy-five
14 (375) milliliters. Such term shall include but not be limited to
15 the beverage popularly known as a "wine cooler";

16 ~~38.~~ 39. "Mixed beverages" means one or more servings of a
17 beverage composed in whole or part of an alcoholic beverage in a
18 sealed or unsealed container of any legal size for consumption on
19 the premises where served or sold by the holder of a mixed beverage,
20 beer and wine, caterer, public event, charitable event or special
21 event license;

22 ~~39.~~ 40. "Motion picture theater" means an establishment which
23 is licensed by Section 2-110 of this title to sell alcoholic
24

1 beverages by the individual drink and where motion pictures are
2 exhibited, and to which the general public is admitted;

3 ~~40.~~ 41. "Nondesignated products" means the brands of wine or
4 spirits offered for sale by a manufacturer that have not been
5 assigned to a designated wholesaler;

6 ~~41.~~ 42. "Nonresident seller" means any person licensed pursuant
7 to Section 2-135 of this title;

8 ~~42.~~ 43. "Retail salesperson" means a salesperson soliciting
9 orders from and calling upon retail alcoholic beverage stores with
10 regard to his or her product;

11 ~~43.~~ 44. "Occupation" as used in connection with "occupation
12 tax" means the sites occupied as the places of business of the
13 manufacturers, brewers, wholesalers, beer distributors, retailers,
14 mixed beverage licensees, on-premises beer and wine licensees,
15 bottle clubs, caterers, public event and special event licensees;

16 ~~44.~~ 45. "Original package" means any container of alcoholic
17 beverage filled and stamped or sealed by the manufacturer or brewer;

18 ~~45.~~ 46. "Package store" means any sole proprietor or
19 partnership that qualifies to sell wine, beer and/or spirits for
20 off-premises consumption and that is not a grocery store,
21 convenience store or drug store, or other retail outlet that is not
22 permitted to sell wine or beer for off-premises consumption;

23 ~~46.~~ 47. "Patron" means any person, customer or visitor who is
24 not employed by a licensee or who is not a licensee;

1 ~~47.~~ 48. "Person" means an individual, any type of partnership,
2 corporation, association, limited liability company or any
3 individual involved in the legal structure of any such business
4 entity;

5 ~~48.~~ 49. "Premises" means the grounds and all buildings and
6 appurtenances pertaining to the grounds including any adjacent
7 premises if under the direct or indirect control of the licensee and
8 the rooms and equipment under the control of the licensee and used
9 in connection with or in furtherance of the business covered by a
10 license. Provided that the ABLE Commission shall have the authority
11 to designate areas to be excluded from the licensed premises solely
12 for the purpose of:

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

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

21 ~~49.~~ 50. "Private event" means a social gathering or event
22 attended by invited guests who share a common cause, membership,
23 business or task and have a prior established relationship. For
24 purposes of this definition, advertisement for general public

1 attendance or sales of tickets to the general public shall not
2 constitute a private event;

3 ~~50.~~ 51. "Public event" means any event that can be attended by
4 the general public;

5 ~~51.~~ 52. "Rectifier" means any person who rectifies, purifies or
6 refines spirits or wines by any process (other than by original and
7 continuous distillation, or original and continuous processing, from
8 mash, wort, wash or other substance, through continuous closed
9 vessels and pipes, until the production thereof is complete), and
10 any person who, without rectifying, purifying or refining spirits,
11 shall by mixing (except for immediate consumption on the premises
12 where mixed) such spirits, wine or other liquor with any material,
13 manufactures any spurious, imitation or compound liquors for sale,
14 under the name of whiskey, brandy, rum, gin, wine, spirits, cordials
15 or any other name;

16 ~~52.~~ 53. "Regulation" or "rule" means a formal rule of general
17 application promulgated by the ABLE Commission as herein required;

18 ~~53.~~ 54. "Restaurant" means an establishment that is licensed to
19 sell alcoholic beverages by the individual drink for on-premises
20 consumption and where food is prepared and sold for immediate
21 consumption on the premises;

22 ~~54.~~ 55. "Retail container for spirits and wines" means an
23 original package of any capacity approved by the United States
24 Bureau of Alcohol, Tobacco and Firearms;

1 ~~55.~~ 56. "Retailer" means a package store, grocery store,
2 convenience store or drug store licensed to sell alcoholic beverages
3 for off-premises consumption pursuant to a Retail Spirits License,
4 Retail Wine License or Retail Beer License;

5 ~~56.~~ 57. "Sale" means any transfer, exchange or barter in any
6 manner or by any means whatsoever, and includes and means all sales
7 made by any person, whether as principal, proprietor or as an agent,
8 servant or employee. The term "sale" is also declared to be and
9 include the use or consumption in this state of any alcoholic
10 beverage obtained within or imported from without this state, upon
11 which the excise tax levied by the Oklahoma Alcoholic Beverage
12 Control Act has not been paid or exempted;

13 ~~57.~~ 58. "Short-order food" means food other than full meals
14 including but not limited to sandwiches, soups and salads. Provided
15 that popcorn, chips and other similar snack food shall not be
16 considered "short-order food";

17 ~~58.~~ 59. "Small brewer" means a brewer who manufactures less
18 than sixty-five thousand barrels of beer annually pursuant to a
19 validly issued Small Brewer License hereunder;

20 ~~59.~~ 60. "Small farm wine" means a wine that is produced by a
21 small farm winery with seventy-five percent (75%) or more Oklahoma-
22 grown grapes, berries, other fruits, honey or vegetables;

23 ~~60.~~ 61. "Small farm winery" means a wine-making establishment
24 that does not annually produce for sale more than fifteen thousand

1 (15,000) gallons of wine as reported on the United States Department
2 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of
3 Wine Premises Operations (TTB Form 5120.17);

4 ~~61.~~ 62. "Sparkling wine" means champagne or any artificially
5 carbonated wine;

6 ~~62.~~ 63. "Special event" means an entertainment, recreation or
7 marketing event that occurs at a single location on an irregular
8 basis and at which alcoholic beverages are sold;

9 ~~63.~~ 64. "Spirits" means any beverage other than wine or beer,
10 which contains more than one-half of one percent (1/2 of 1%) alcohol
11 measured by volume, and obtained by distillation, whether or not
12 mixed with other substances in solution and includes those products
13 known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and
14 fortified wines and similar compounds, but shall not include any
15 alcohol liquid completely denatured in accordance with the Acts of
16 Congress and regulations pursuant thereto;

17 ~~64.~~ 65. "Strong beer" means beer which, prior to October 1,
18 2018, was distributed pursuant to the Oklahoma Alcoholic Beverage
19 Control Act, Section 501 et seq. of Title 37 of the Oklahoma
20 Statutes;

21 ~~65.~~ 66. "Successor brewer" means a primary source of supply, a
22 brewer, a cider manufacturer or an importer that acquires rights to
23 a beer or cider brand from a predecessor brewer;

24 ~~66.~~ 67. "Tax Commission" means the Oklahoma Tax Commission;

1 ~~67.~~ 68. "Territory" means a geographic region with a specified
2 boundary;

3 ~~68.~~ 69. "Wine and spirits wholesaler" or "wine and spirits
4 distributor" means and includes any sole proprietorship or
5 partnership licensed to distribute wine and spirits in the state.
6 The term "wholesaler", as used in the Oklahoma Alcoholic Beverage
7 Control Act, shall be construed to refer to a wine and spirits
8 wholesaler;

9 ~~69.~~ 70. "Wine" means and includes any beverage containing more
10 than one-half of one percent (1/2 of 1%) alcohol by volume and not
11 more than twenty-four percent (24%) alcohol by volume at sixty (60)
12 degrees Fahrenheit obtained by the fermentation of the natural
13 contents of fruits, vegetables, honey, milk or other products
14 containing sugar, whether or not other ingredients are added, and
15 includes vermouth and sake, known as Japanese rice wine;

16 ~~70.~~ 71. "Winemaker" means and includes any person or
17 establishment who manufactures for human consumption any wine upon
18 which a license fee and a tax are imposed by any law of this state;
19 and

20 ~~71.~~ 72. "Satellite tasting room" means a licensed establishment
21 operated off the licensed premises of the holder of a small farm
22 winery or winemaker license, which serves wine for on-premises or
23 off-premises consumption.

24

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

4 SECTION 2. This act shall become effective November 1, 2023.

5 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
6 February 27, 2023 - DO PASS AS AMENDED
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