

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB639 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: TJ Marti _____

Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 PROPOSED
4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 639

By: Coleman of the Senate

and

Marti of the House

7
8
9
10 PROPOSED COMMITTEE SUBSTITUTE

11 An Act relating to alcoholic beverages; amending 37A
12 O.S. 2021, Section 1-103, which relates to
13 definitions; adding and modifying definitions; and
14 providing an effective date.

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

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

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

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

22 2. "Alcohol" means and includes hydrated oxide of ethyl, ethyl
23 alcohol, ethanol or spirits of wine, from whatever source or by
24 whatever process produced. It does not include wood alcohol or

1 alcohol which has been denatured or produced as denatured in
2 accordance with Acts of Congress and regulations promulgated
3 thereunder;

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

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

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

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

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

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

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

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

19 11. "Brand extension" means:

20 a. after October 1, 2018, any brand of beer or cider
21 introduced by a manufacturer in this state which
22 either:
23
24

1 (1) incorporates all or a substantial part of the
2 unique features of a preexisting brand of the
3 same licensed brewer, or

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

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

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

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

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

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

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

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

22 16. "Convenience store" means any person primarily engaged in
23 retailing a limited range of general household items and groceries,
24

1 with extended hours of operation, whether or not engaged in retail
2 sales of automotive fuels in combination with such sales;

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

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

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

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

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

23

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

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

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

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

12 b. as strong beer pursuant to the Alcoholic Beverage
13 Control Act in effect immediately prior to October 1,
14 2018,

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

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

24 26. "Good cause" means:

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

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

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

14 29. "Seltzer" means any beverage containing more than one-half
15 of one percent (0.50%) of alcohol by volume and obtained by the
16 alcoholic fermentation of grain or sugar and combined with
17 carbonated water and other flavoring and labeled as a "malt
18 beverage" by the United States Department of Treasury Alcohol and
19 Tobacco Tax and Trade Bureau or as beer by the Food and Drug
20 Administration. Provided, that hard seltzer shall not include
21 carbonated beverages mixed with wine and spirits.

22 30. "Hotel" or "motel" means an establishment which is licensed
23 to sell alcoholic beverages by the individual drink and which
24 contains guestroom accommodations with respect to which the

1 predominant relationship existing between the occupants thereof and
2 the owner or operator of the establishment is that of innkeeper and
3 guest. For purposes of this section, the existence of other legal
4 relationships as between some occupants and the owner or operator
5 thereof shall be immaterial;

6 ~~30.~~ 31. "Legal newspaper" means a newspaper meeting the
7 requisites of a newspaper for publication of legal notices as
8 prescribed in Sections 101 through 114 of Title 25 of the Oklahoma
9 Statutes;

10 ~~31.~~ 32. "Licensee" means any person holding a license under the
11 Oklahoma Alcoholic Beverage Control Act, and any agent, servant or
12 employee of such licensee while in the performance of any act or
13 duty in connection with the licensed business or on the licensed
14 premises;

15 ~~32.~~ 33. "Low-point beer" shall mean any beverages containing
16 more than one-half of one percent (1/2 of 1%) alcohol by volume, and
17 not more than three and two-tenths percent (3.2%) alcohol by weight,
18 including but not limited to, beer or cereal malt beverages obtained
19 by the alcoholic fermentation of an infusion by barley or other
20 grain, malt or similar products;

21 ~~33.~~ 34. "Manufacturer" means a distiller, winemaker, rectifier
22 or bottler of any alcoholic beverage (other than beer) and its
23 subsidiaries, affiliates and parent companies;

24

1 ~~34.~~ 35. "Manufacturer's agent" means a salaried or commissioned
2 salesperson who is the agent authorized to act on behalf of the
3 manufacturer or nonresident seller in the state;

4 ~~35.~~ 36. "Meals" means foods commonly ordered at lunch or dinner
5 and at least part of which is cooked on the licensed premises and
6 requires the use of dining implements for consumption. Provided,
7 that the service of only food such as appetizers, sandwiches, salads
8 or desserts shall not be considered "meals";

9 ~~36.~~ 37. "Mini-bar" means a closed container, either
10 refrigerated in whole or in part, or nonrefrigerated, and access to
11 the interior of which is:

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

15 ~~37.~~ 38. "Mixed beverage cooler" means any beverage, by whatever
16 name designated, consisting of an alcoholic beverage and fruit or
17 vegetable juice, fruit or vegetable flavorings, dairy products or
18 carbonated water containing more than one-half of one percent (1/2
19 of 1%) of alcohol measured by volume but not more than seven percent
20 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is
21 packaged in a container not larger than three hundred seventy-five
22 (375) milliliters. Such term shall include but not be limited to
23 the beverage popularly known as a "wine cooler";

1 ~~38.~~ 39. "Mixed beverages" means one or more servings of a
2 beverage composed in whole or part of an alcoholic beverage in a
3 sealed or unsealed container of any legal size for consumption on
4 the premises where served or sold by the holder of a mixed beverage,
5 beer and wine, caterer, public event, charitable event or special
6 event license;

7 ~~39.~~ 40. "Motion picture theater" means an establishment which
8 is licensed by Section 2-110 of this title to sell alcoholic
9 beverages by the individual drink and where motion pictures are
10 exhibited, and to which the general public is admitted;

11 ~~40.~~ 41. "Nondesignated products" means the brands of wine or
12 spirits offered for sale by a manufacturer that have not been
13 assigned to a designated wholesaler;

14 ~~41.~~ 42. "Nonresident seller" means any person licensed pursuant
15 to Section 2-135 of this title;

16 ~~42.~~ 43. "Retail salesperson" means a salesperson soliciting
17 orders from and calling upon retail alcoholic beverage stores with
18 regard to his or her product;

19 ~~43.~~ 44. "Occupation" as used in connection with "occupation
20 tax" means the sites occupied as the places of business of the
21 manufacturers, brewers, wholesalers, beer distributors, retailers,
22 mixed beverage licensees, on-premises beer and wine licensees,
23 bottle clubs, caterers, public event and special event licensees;

1 ~~44.~~ 45. "Original package" means any container of alcoholic
2 beverage filled and stamped or sealed by the manufacturer or brewer;

3 ~~45.~~ 46. "Package store" means any sole proprietor or
4 partnership that qualifies to sell wine, beer and/or spirits for
5 off-premises consumption and that is not a grocery store,
6 convenience store or drug store, or other retail outlet that is not
7 permitted to sell wine or beer for off-premises consumption;

8 ~~46.~~ 47. "Patron" means any person, customer or visitor who is
9 not employed by a licensee or who is not a licensee;

10 ~~47.~~ 48. "Person" means an individual, any type of partnership,
11 corporation, association, limited liability company or any
12 individual involved in the legal structure of any such business
13 entity;

14 ~~48.~~ 49. "Premises" means the grounds and all buildings and
15 appurtenances pertaining to the grounds including any adjacent
16 premises if under the direct or indirect control of the licensee and
17 the rooms and equipment under the control of the licensee and used
18 in connection with or in furtherance of the business covered by a
19 license. Provided that the ABLE Commission shall have the authority
20 to designate areas to be excluded from the licensed premises solely
21 for the purpose of:

- 22 a. allowing the presence and consumption of alcoholic
23 beverages by private parties which are closed to the
24 general public, or

1 b. allowing the services of a caterer serving alcoholic
2 beverages provided by a private party.

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

6 ~~49.~~ 50. "Private event" means a social gathering or event
7 attended by invited guests who share a common cause, membership,
8 business or task and have a prior established relationship. For
9 purposes of this definition, advertisement for general public
10 attendance or sales of tickets to the general public shall not
11 constitute a private event;

12 ~~50.~~ 51. "Public event" means any event that can be attended by
13 the general public;

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

1 ~~52.~~ 53. "Regulation" or "rule" means a formal rule of general
2 application promulgated by the ABLE Commission as herein required;

3 ~~53.~~ 54. "Restaurant" means an establishment that is licensed to
4 sell alcoholic beverages by the individual drink for on-premises
5 consumption and where food is prepared and sold for immediate
6 consumption on the premises;

7 ~~54.~~ 55. "Retail container for spirits and wines" means an
8 original package of any capacity approved by the United States
9 Bureau of Alcohol, Tobacco and Firearms;

10 ~~55.~~ 56. "Retailer" means a package store, grocery store,
11 convenience store or drug store licensed to sell alcoholic beverages
12 for off-premises consumption pursuant to a Retail Spirits License,
13 Retail Wine License or Retail Beer License;

14 ~~56.~~ 57. "Sale" means any transfer, exchange or barter in any
15 manner or by any means whatsoever, and includes and means all sales
16 made by any person, whether as principal, proprietor or as an agent,
17 servant or employee. The term "sale" is also declared to be and
18 include the use or consumption in this state of any alcoholic
19 beverage obtained within or imported from without this state, upon
20 which the excise tax levied by the Oklahoma Alcoholic Beverage
21 Control Act has not been paid or exempted;

22 ~~57.~~ 58. "Short-order food" means food other than full meals
23 including but not limited to sandwiches, soups and salads. Provided
24

1 that popcorn, chips and other similar snack food shall not be
2 considered "short-order food";

3 ~~58.~~ 59. "Small brewer" means a brewer who manufactures less
4 than sixty-five thousand barrels of beer annually pursuant to a
5 validly issued Small Brewer License hereunder;

6 ~~59.~~ 60. "Small farm wine" means a wine that is produced by a
7 small farm winery with seventy-five percent (75%) or more Oklahoma-
8 grown grapes, berries, other fruits, honey or vegetables;

9 ~~60.~~ 61. "Small farm winery" means a wine-making establishment
10 that does not annually produce for sale more than fifteen thousand
11 (15,000) gallons of wine as reported on the United States Department
12 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of
13 Wine Premises Operations (TTB Form 5120.17);

14 ~~61.~~ 62. "Sparkling wine" means champagne or any artificially
15 carbonated wine;

16 ~~62.~~ 63. "Special event" means an entertainment, recreation or
17 marketing event that occurs at a single location on an irregular
18 basis and at which alcoholic beverages are sold;

19 ~~63.~~ 64. "Spirits" means any beverage other than wine or beer,
20 which contains more than one-half of one percent (1/2 of 1%) alcohol
21 measured by volume, and obtained by distillation, whether or not
22 mixed with other substances in solution and includes those products
23 known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and
24 fortified wines and similar compounds, but shall not include any

1 alcohol liquid completely denatured in accordance with the Acts of
2 Congress and regulations pursuant thereto;

3 ~~64.~~ 65. "Strong beer" means beer which, prior to October 1,
4 2018, was distributed pursuant to the Oklahoma Alcoholic Beverage
5 Control Act, Section 501 et seq. of Title 37 of the Oklahoma
6 Statutes;

7 ~~65.~~ 66. "Successor brewer" means a primary source of supply, a
8 brewer, a cider manufacturer or an importer that acquires rights to
9 a beer or cider brand from a predecessor brewer;

10 ~~66.~~ 67. "Tax Commission" means the Oklahoma Tax Commission;

11 ~~67.~~ 68. "Territory" means a geographic region with a specified
12 boundary;

13 ~~68.~~ 69. "Wine and spirits wholesaler" or "wine and spirits
14 distributor" means and includes any sole proprietorship or
15 partnership licensed to distribute wine and spirits in the state.
16 The term "wholesaler", as used in the Oklahoma Alcoholic Beverage
17 Control Act, shall be construed to refer to a wine and spirits
18 wholesaler;

19 ~~69.~~ 70. "Wine" means and includes any beverage containing more
20 than one-half of one percent (1/2 of 1%) alcohol by volume and not
21 more than twenty-four percent (24%) alcohol by volume at sixty (60)
22 degrees Fahrenheit obtained by the fermentation of the natural
23 contents of fruits, vegetables, honey, milk or other products
24

1 containing sugar, whether or not other ingredients are added, and
2 includes vermouth and sake, known as Japanese rice wine;

3 ~~70.~~ 71. "Winemaker" means and includes any person or
4 establishment who manufactures for human consumption any wine upon
5 which a license fee and a tax are imposed by any law of this state;
6 and

7 ~~71.~~ 72. "Satellite tasting room" means a licensed establishment
8 operated off the licensed premises of the holder of a small farm
9 winery or winemaker license, which serves wine for on-premises or
10 off-premises consumption.

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

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

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16 59-1-8065 JL 03/28/23

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