

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB1715

By: Marti of the House and Coleman of the Senate

Title: Alcoholic beverages; beer distribution; termination of agreement; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendments; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

SENATE CONFEREES

Coleman _____
Thompson _____
(Kristen)
Burns _____
Jett _____
Pugh _____
Weaver _____
Brooks _____

1 STATE OF OKLAHOMA

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

3 CONFERENCE COMMITTEE
4 SUBSTITUTE
5 FOR ENGROSSED
6 HOUSE BILL NO. 1715

By: Marti of the House

and

Coleman of the Senate

7
8
9
10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to alcoholic beverages; authorizing
12 the ABLE Commission to permit certain license holders
13 to host off-site events following application;
14 providing details of application; allowing Commission
15 to assess fee; updating statutory language and
16 reference; amending 37A O.S. 2021, Section 1-103,
17 which relates to definitions for the Oklahoma
18 Alcoholic Beverage Control Act; modifying the
19 definition of beer; defining seltzer; updating
20 statutory reference; amending 37A O.S. 2021, amending
21 37A O.S. 2021, Section 2-101, which relates to
22 license fees; modifying fees for certain license
23 holders based on production; amending 37A O.S. 2021,
24 Section 2-102, as amended by Section 1, Chapter 396,
O.S.L. 2021, which relate to brewer licenses;
requiring licensees to sell only the products covered
by licenses; providing for off-site events; amending
37A O.S. 2021, Section 2-103, which relates to a
distiller license; modifying where a distiller may
sell spirits produced by the license holder;
providing that consumers after final sale may add
non-alcoholic substances to the spirits; providing
that non-alcoholic substances are not part of the
distilling process; amending 37A O.S. 2021, Section
2-131, which relates to small farm winery licenses;
allowing certain purchases by small farm winery
license holders; amending 37A O.S. 2021, Section 3-

1 111, which relates to termination of distribution
2 agreement; allowing certain individuals to purchase
3 interest under certain conditions; expanding and
4 clarifying when a brewer may immediately terminate a
5 distributor agreement; providing for compensation for
6 when a brewer terminates a distribution agreement and
7 the brewer obtains a new distributor; providing that
8 reimbursement of arbitration costs shall be awarded
9 to the prevailing party; providing that if a
10 distributor improperly terminated the damages may
11 include the fair market value of the distribution
12 rights; requiring agreements to be null and void in
13 violation of certain provisions; updating statutory
14 reference; amending 37A O.S. 2021, Section 6-102, as
15 amended by Section 1, Chapter 300, O.S.L. 2022 (37A
16 O.S. Supp. 2022, Section 6-102), which relates to
17 licensee prohibited acts; allowing the delivery of up
18 to six bottles or cans of beer at a time for on-
19 premise consumption; repealing 37A O.S. 2021, Section
20 2-102, as amended by Section 1, Chapter 226, O.S.L.
21 2019, which relates to brewer license; providing for
22 codification; and declaring an emergency.

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

24 SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 2-162 of Title 37A, unless there
is created a duplication in numbering, reads as follows:

A. A brewer, small brewer, or small farm winery licensee shall
be authorized to host an off-site event following the submission and
approval of an application to the ABLE Commission. The licensee
shall only be authorized to sell for consumption at the off-site
event alcoholic beverages authorized for sale under the licensee's
respective license. The licensee shall be limited to hosting four
(4) off-site events per year.

1 B. The application shall include, but not be limited to, the
2 location of the off-site event with a designated area within the
3 location designed to provide an exclusive space which may be limited
4 to the public and a designated point of access for a patron or
5 patrons specifically granted access to ensure that persons present
6 in the designated area are above twenty-one (21) years of age. The
7 Commission may prescribe a filing fee for each off-site event
8 application not to exceed Twenty-five Dollars (\$25.00).

9 C. The ABLE Commission shall promulgate rules necessary for the
10 implementation of this section.

11 SECTION 2. 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, sugar, malt or similar products. For the purposes of
11 taxation, distribution, sales, and regulation, seltzer shall mean
12 the same as beer as provided in this section. "~~Beer~~" Beer may or
13 may not contain hops or other vegetable products. "~~Beer~~" Beer
14 includes, among other things, beer, ale, stout, lager beer, porter,
15 seltzer, and other malt or brewed liquors, but does not include
16 sake, known as Japanese rice wine;

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

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

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

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

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

13 11. "Brand extension" means:

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

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

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

22 b. any brand of beer that a brewer, the majority of whose
23 total volume of all brands of beer distributed in this
24 state by such brewer on January 1, 2016, was

1 distributed as low-point beer, desires to sell,
2 introduces, begins selling or theretofore has sold and
3 desires to continue selling a strong beer in this
4 state which either:

- 5 (1) incorporates or incorporated all or a substantial
6 part of the unique features of a preexisting low-
7 point beer brand of the same licensed brewer, or
- 8 (2) relies or relied to a significant extent on the
9 goodwill associated with a preexisting low-point
10 beer brand;

11 12. "Brewer" means and includes any person who manufactures for
12 human consumption by the use of raw materials or other ingredients
13 any beer or cider upon which a license fee and a tax are imposed by
14 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. failure by the distributor to comply with the material
15 and reasonable provisions of a written agreement or
16 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. "Hotel" or "motel" means an establishment which is licensed
4 to sell alcoholic beverages by the individual drink and which
5 contains guestroom accommodations with respect to which the
6 predominant relationship existing between the occupants thereof and
7 the owner or operator of the establishment is that of innkeeper and
8 guest. For purposes of this section, the existence of other legal
9 relationships as between some occupants and the owner or operator
10 thereof shall be immaterial;

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

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

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

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

4 34. "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 35. "Meals" means foods commonly ordered at lunch or dinner and
8 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"~~ meals;

12 36. "Mini-bar" means a closed container, either refrigerated in
13 whole or in part, or nonrefrigerated, and access to the interior of
14 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 37. "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 38. "Mixed beverages" means one or more servings of a beverage
4 composed in whole or part of an alcoholic beverage in a sealed or
5 unsealed container of any legal size for consumption on the premises
6 where served or sold by the holder of a mixed beverage, beer and
7 wine, caterer, public event, charitable event or special event
8 license;

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

13 40. "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 41. "Nonresident seller" means any person licensed pursuant to
17 Section 2-135 of this title;

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

21 43. "Occupation" as used in connection with "occupation tax"
22 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 44. "Original package" means any container of alcoholic
4 beverage filled and stamped or sealed by the manufacturer or brewer;

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

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

12 47. "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 48. "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 49. "Private event" means a social gathering or event attended
10 by invited guests who share a common cause, membership, business or
11 task and have a prior established relationship. For purposes of
12 this definition, advertisement for general public attendance or
13 sales of tickets to the general public shall not constitute a
14 private event;

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

17 51. "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 52. "Regulation" or "rule" means a formal rule of general
5 application promulgated by the ABLE Commission as herein required;

6 53. "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 54. "Retail container for spirits and wines" means an original
11 package of any capacity approved by the United States Bureau of
12 Alcohol, Tobacco ~~and~~, Firearms and Explosives;

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

17 56. "Sale" means any transfer, exchange or barter in any manner
18 or by any means whatsoever, and includes and means all sales made by
19 any person, whether as principal, proprietor or as an agent, servant
20 or employee. The term ~~"sale"~~ 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 57. "Seltzer" means any beverage containing more than one-half
2 of one percent (0.50%) of alcohol by volume and obtained by the
3 alcoholic fermentation of malt, rice, grain of any kind, bran,
4 glucose, sugar, or molasses and combined with carbonated water and
5 other flavoring and labeled as "beer" by the Internal Revenue Code;
6 provided, that seltzer shall not include carbonated beverages mixed
7 with wine or spirits;

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

12 ~~58.~~ 59. "Small brewer" means a brewer who manufactures less
13 than sixty-five thousand barrels of beer annually pursuant to a
14 validly issued Small Brewer License hereunder;

15 ~~59.~~ 60. "Small farm wine" means a wine that is produced by a
16 small farm winery with seventy-five percent (75%) or more Oklahoma-
17 grown grapes, berries, other fruits, honey or vegetables;

18 ~~60.~~ 61. "Small farm winery" means a wine-making establishment
19 that does not annually produce for sale more than fifteen thousand
20 (15,000) gallons of wine as reported on the United States Department
21 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of
22 Wine Premises Operations (TTB Form 5120.17);

23 ~~61.~~ 62. "Sparkling wine" means champagne or any artificially
24 carbonated wine;

1 ~~62.~~ 63. "Special event" means an entertainment, recreation or
2 marketing event that occurs at a single location on an irregular
3 basis and at which alcoholic beverages are sold;

4 ~~63.~~ 64. "Spirits" means any beverage other than wine or beer,
5 which contains more than one-half of one percent (1/2 of 1%) alcohol
6 measured by volume, and obtained by distillation, whether or not
7 mixed with other substances in solution and includes those products
8 known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and
9 fortified wines and similar compounds, but shall not include any
10 alcohol liquid completely denatured in accordance with the Acts of
11 Congress and regulations pursuant thereto;

12 ~~64.~~ 65. "Strong beer" means beer which, prior to October 1,
13 2018, was distributed pursuant to the Oklahoma Alcoholic Beverage
14 Control Act, Section ~~501~~ 1-101 et seq. of ~~Title 37 of the Oklahoma~~
15 ~~Statutes~~ this title;

16 ~~65.~~ 66. "Successor brewer" means a primary source of supply, a
17 brewer, a cider manufacturer or an importer that acquires rights to
18 a beer or cider brand from a predecessor brewer;

19 ~~66.~~ 67. "Tax Commission" means the Oklahoma Tax Commission;

20 ~~67.~~ 68. "Territory" means a geographic region with a specified
21 boundary;

22 ~~68.~~ 69. "Wine and spirits wholesaler" or "wine and spirits
23 distributor" means and includes any sole proprietorship or
24 partnership licensed to distribute wine and spirits in the state.

1 The term "wholesaler", as used in the Oklahoma Alcoholic Beverage
2 Control Act, shall be construed to refer to a wine and spirits
3 wholesaler;

4 ~~69.~~ 70. "Wine" means and includes any beverage containing more
5 than one-half of one percent (1/2 of 1%) alcohol by volume and not
6 more than twenty-four percent (24%) alcohol by volume at sixty (60)
7 degrees Fahrenheit obtained by the fermentation of the natural
8 contents of fruits, vegetables, honey, milk or other products
9 containing sugar, whether or not other ingredients are added, and
10 includes vermouth and sake, known as Japanese rice wine;

11 ~~70.~~ 71. "Winemaker" means and includes any person or
12 establishment who manufactures for human consumption any wine upon
13 which a license fee and a tax are imposed by any law of this state;
14 and

15 ~~71.~~ 72. "Satellite tasting room" means a licensed establishment
16 operated off the licensed premises of the holder of a small farm
17 winery or winemaker license, which serves wine for on-premises or
18 off-premises consumption.

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

22 SECTION 3. AMENDATORY 37A O.S. 2021, Section 2-101, is
23 amended to read as follows:

24

1 Section 2-101. A. Except as otherwise provided in this
2 section, the licenses issued by the ABLE Commission, and the annual
3 fees therefor, shall be as follows:

- 4 1. Brewer License..... \$1,250.00
- 5 2. Small Brewer License..... \$125.00
- 6 3. Distiller License..... \$3,125.00
- 7 4. Winemaker License..... \$625.00
- 8 5. Small Farm Winery License..... \$75.00
- 9 6. Rectifier License..... \$3,125.00
- 10 7. Wine and Spirits Wholesaler License..... \$3,000.00
- 11 8. Beer Distributor License..... \$750.00
- 12 9. The following retail spirits license fees
13 shall be determined by the latest Federal
14 Decennial Census:
 - 15 a. Retail Spirits License for cities and
16 towns from 200 to 2,500 population..... \$305.00
 - 17 b. Retail Spirits License for cities and
18 towns from 2,501 to 5,000 population..... \$605.00
 - 19 c. Retail Spirits License for cities and
20 towns over 5,000 population..... \$905.00
- 21 10. Retail Wine License..... \$1,000.00
- 22 11. Retail Beer License..... \$500.00
- 23 12. Mixed Beverage License..... \$1,005.00

24 (initial license)

1		\$905.00
2		(renewal)
3	13. Mixed Beverage/Caterer Combination License.....	\$1,250.00
4	14. On-Premises Beer and Wine License.....	\$500.00
5		(initial license)
6		\$450.00
7		(renewal)
8	15. Bottle Club License.....	\$1,000.00
9		(initial license)
10		\$900.00
11		(renewal)
12	16. Caterer License.....	\$1,005.00
13		(initial license)
14		\$905.00
15		(renewal)
16	17. Annual Special Event License.....	\$55.00
17	18. Quarterly Special Event License.....	\$55.00
18	19. Hotel Beverage License.....	\$1,005.00
19		(initial license)
20		\$905.00
21		(renewal)
22	20. Airline/Railroad/Commercial Passenger Vessel Beverage	
23	License.....	\$1,005.00
24		(initial license)

1		\$905.00
2		(renewal)
3	21. Agent License.....	\$55.00
4	22. Employee License.....	\$30.00
5	23. Industrial License.....	\$23.00
6	24. Carrier License.....	\$23.00
7	25. Private Carrier License.....	\$23.00
8	26. Bonded Warehouse License.....	\$190.00
9	27. Storage License.....	\$23.00
10	28. Nonresident Seller License	\$750.00
11	29. Manufacturer License:	
12	a. 50 cases or less sold in Oklahoma in	
13	last calendar year.....	\$50.00
14	b. 51 to 500 cases sold in Oklahoma in	
15	last calendar year.....	\$75.00
16	c. 501 cases or more sold in Oklahoma in	
17	last calendar year.....	\$150.00
18	30. Manufacturer's Agent License.....	\$55.00
19	31. Sacramental Wine Supplier License.....	\$100.00
20	32. Charitable Auction License.....	\$1.00
21	33. Charitable Alcoholic Beverage License.....	\$55.00
22	34. Winemaker Self-Distribution License:	
23	<u>a. produced ten thousand (10,000) gallons</u>	
24	<u>or less in last calendar year.....</u>	<u>\$350.00</u>

1 b. produced more than ten thousand
2 (10,000) gallons but no more than
3 fifteen thousand (15,000) gallons in
4 last calendar year..... \$750.00

5 35. Annual Public Event License..... \$1,005.00

6 36. One-Time Public Event License..... \$255.00

7 37. Small Brewer Self-Distribution License:

8 a. produced fifteen thousand (15,000)
9 barrels or less in last calendar year..... \$350.00

10 b. produced more than fifteen thousand
11 (15,000) barrels in last calendar year..... \$750.00

12 38. Brewpub License..... \$1,005.00

13 39. Brewpub Self-Distribution License..... \$750.00

14 40. Complimentary Beverage License..... \$75.00

15 41. Satellite Tasting Room License..... \$100.00

16 B. 1. There shall be added to the initial or renewal fees for
17 a ~~Mixed Beverage License~~ mixed beverage license an administrative
18 fee, which shall not be deemed to be a license fee, in the amount of
19 Five Hundred Dollars (\$500.00), which shall be paid at the same time
20 and in the same manner as the license fees prescribed by paragraph
21 12 of subsection A of this section; provided, this fee shall not be
22 assessed against service organizations or fraternal beneficiary
23 societies which are exempt under Section 501(c)(19), (8) or (10) of
24 the Internal Revenue Code.

1 2. There shall be added to the fee for a ~~Mixed Beverage/Caterer~~
2 ~~Combination License~~ mixed beverage/caterer combination license an
3 administrative fee, which shall not be deemed to be a license fee,
4 in the amount of Two Hundred Fifty Dollars (\$250.00), which shall be
5 paid at the same time and in the same manner as the license fee
6 prescribed by paragraph 13 of subsection A of this section.

7 C. Notwithstanding the provisions of subsection A of this
8 section:

9 1. The license fee for a mixed beverage or bottle club license
10 for those service organizations or fraternal beneficiary societies
11 which are exempt under Section 501(c)(19), (8) or (10) of the
12 Internal Revenue Code shall be Five Hundred Dollars (\$500.00) per
13 year; and

14 2. The renewal fee for an airline/railroad/commercial passenger
15 vessel beverage license held by a railroad described in 49 U.S.C.,
16 Section 24301, shall be One Hundred Dollars (\$100.00).

17 D. An applicant may apply for and receive both an on-premises
18 beer and wine license and a caterer license.

19 E. All licenses, except as otherwise provided, shall be valid
20 for one (1) year from date of issuance unless revoked or
21 surrendered. Provided, all employee licenses shall be valid for two
22 (2) years.

23 F. The holder of a license, issued by the ABLE Commission, for
24 a bottle club located in a county of this state where the sale of

1 alcoholic beverages by the individual drink for on-premises
2 consumption has been authorized, may exchange the bottle club
3 license for a mixed beverage license or an on-premises beer and wine
4 license and operate the licensed premises as a mixed beverage
5 establishment or an on-premises beer and wine establishment subject
6 to the provisions of the Oklahoma Alcoholic Beverage Control Act.
7 There shall be no additional fee for such exchange and the mixed
8 beverage license or on-premises beer and wine license issued shall
9 expire one (1) year from the date of issuance of the original bottle
10 club license.

11 G. In addition to the applicable licensing fee, the following
12 surcharge shall be assessed annually on the following licenses:

- 13 1. Nonresident Seller License..... \$2,500.00
- 14 2. Manufacturer License:
 - 15 a. 50 cases or less sold in Oklahoma in
 - 16 last calendar year..... \$100.00
 - 17 b. 51 to 500 cases sold in Oklahoma in
 - 18 last calendar year..... \$225.00
 - 19 c. 501 cases or more sold in Oklahoma in
 - 20 last calendar year..... \$450.00
- 21 3. Wine and Spirits Wholesaler License..... \$2,500.00
- 22 4. Beer Distributor..... \$1,000.00
- 23 5. Retail Spirits License for cities and towns
- 24 over 5,000 population..... \$250.00

- 1 6. Retail Spirits License for cities and towns
- 2 from 2,501 to 5,000 population..... \$200.00
- 3 7. Retail Spirits License for cities and towns
- 4 from 200 to 2,500 population..... \$150.00
- 5 8. Retail Wine License..... \$250.00
- 6 9. Retail Beer License..... \$250.00
- 7 10. Mixed Beverage License..... \$25.00
- 8 11. Mixed Beverage/Caterer Combination License..... \$25.00
- 9 12. Caterer License..... \$25.00
- 10 13. On-Premises Beer and Wine License..... \$25.00
- 11 14. Annual Public Event License..... \$25.00
- 12 15. Small Farm Winery License..... \$25.00
- 13 16. Small Brewer License..... \$35.00
- 14 17. Complimentary Beverage License..... \$25.00

15 The surcharge shall be paid concurrent with the licensee's
 16 annual licensing fee and, in addition to Five Dollars (\$5.00) of the
 17 employee license fee, shall be deposited in the Alcoholic Beverage
 18 Governance Revolving Fund established pursuant to Section 5-128 of
 19 this title.

20 H. Any license issued by the ABLE Commission under this title
 21 may be relied upon by other licensees as a valid license, and no
 22 other licensee shall have any obligation to independently determine
 23 the validity of such license or be held liable solely as a

24

1 consequence of another licensee's failure to maintain a valid
2 license.

3 SECTION 4. AMENDATORY 37A O.S. 2021, Section 2-102, as
4 amended by Section 1, Chapter 396, O.S.L. 2021, is amended to read
5 as follows:

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

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

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

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

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

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

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

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

24

1 5. To sell beer and cider at ~~public~~ events ~~such as~~ attended by
2 the public including, but not limited to, trade shows ~~or,~~ festivals,
3 farmers markets, boat shows, RV shows, home and garden shows, fairs,
4 car shows, swap meets, city events, county events, or state events
5 for either on-premises or off-premises consumption, regardless of
6 whether such events are held at premises covered by a license to
7 sell, serve, or store alcoholic beverages. A small brewer license
8 holder shall not be required to secure or control the premises of an
9 event attended by the public where the small brewer license holder
10 sells beer or cider;

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

13 7. To sell, offer for sale and possess wine for on-premises
14 consumption;

15 8. To host off-site events pursuant to Section 4 of this act;
16 and

17 9. To purchase from licensed brewers, small brewers, and
18 brewpubs in this state, and to import beer into this state for use
19 in manufacturing in accordance with federal laws and regulations.

20 C. The holder of multiple small brewer licenses may sell beer
21 and cider produced at up to three breweries for which the licensee
22 has a license, at any other of such three licensed breweries or on
23 premises located contiguous thereto.

24

1 D. Nothing in the Oklahoma Alcoholic Beverage Control Act shall
2 prohibit the holder of a small brewer license from also holding or
3 owning an interest in the holder of a brewpub license.

4 E. For purposes of this section, no visitor may sample more
5 than a total of twelve (12) fluid ounces of beer and cider per day.
6 The brewer must restrict the distribution ~~and consumption~~ of beer
7 and cider samples to an area within the licensed premises ~~designated~~
8 ~~by the brewer~~ as defined in this subsection. A current floor plan
9 that includes the designated ~~sampling~~ serving area must be on file
10 with the ABLE Commission. No visitor under twenty-one (21) years of
11 age shall be permitted to enter this designated ~~sampling~~ serving
12 area ~~when samples are being distributed or consumed~~. Accompanied
13 visitors under twenty-one (21) years of age shall be allowed
14 anywhere on the premises except for a serving area. Samples of beer
15 and cider served by a brewery under this section shall not be
16 considered a sale of beer and cider within the meaning of Article
17 XXVIII-A of the Oklahoma Constitution or Section 1-103 of this
18 title; however, such samples of beer and cider shall be considered
19 beer and cider removed or withdrawn from the brewery for use or
20 consumption within the meaning of Section 5-110 of this title for
21 excise tax determination and reporting requirements. Sales and
22 sampling may only occur between the hours of 10:00 a.m. and 2:00
23 a.m. For purposes of this subsection, "serving area" means the area
24 of the bar where drinks are sold, prepared, and served to paying

1 customers and shall not include other areas of the brewery where
2 customers consume purchased products.

3 F. A small brewer self-distribution license shall authorize
4 holders of a small brewer license to distribute beer and cider
5 produced only by such licensee to a holder of a retail beer license,
6 retail spirits license, mixed beverage license, beer and wine
7 license, caterer's license, special event license, public event
8 license, charitable auction license or brewpub license. A small
9 brewer shall elect whether it will distribute through a distributor
10 or self-distribute in a subject territory; however, a small brewer
11 may not 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 G. All manufacturer's licenses held by brewers during the first
19 calendar year beginning October 1, 2018, shall automatically convert
20 to brewer licenses and be deemed effective as of the date of the
21 first issuance of the manufacturer's license. Upon the first
22 renewal of the license, the brewer will need to obtain the
23 appropriate brewer's license. If a brewer elects to market wine and
24

1 spirits, the brewer will also be required to obtain a manufacturer's
2 license and comply with the rules and regulations for both licenses.

3 SECTION 5. AMENDATORY 37A O.S. 2021, Section 2-103, is
4 amended to read as follows:

5 Section 2-103. A. A distiller license shall authorize the
6 holder thereof:

7 1. To manufacture, bottle, package and store spirits on
8 licensed premises;

9 2. To sell spirits in this state to licensed wholesalers and
10 manufacturers only;

11 3. To sell spirits out of this state to qualified persons; to
12 purchase from licensed distillers and rectifiers in this state, and
13 import spirits from without this state for manufacturing purposes in
14 accordance with federal laws and regulations;

15 4. To serve free samples of spirits produced only by the
16 licensee to visitors twenty-one (21) years of age and older. For
17 purposes of this section, no visitor may sample more than a total of
18 three (3) fluid ounces of spirits per day. The distiller shall
19 restrict the distribution and consumption of spirits samples to an
20 area within the licensed premises designated by the distiller. A
21 current floor plan that includes the designated sampling area shall
22 be on file with the ABLE Commission. No visitor under twenty-one
23 (21) years of age shall be permitted to enter the designated
24 sampling area when samples are being distributed and consumed.

1 Samples of spirits served by a distiller under this section shall
2 not be considered a sale of spirits within the meaning of Article
3 XXVIII-A of the Oklahoma Constitution or Section 1-103 of this
4 title; provided, such samples of spirits shall be considered removed
5 or withdrawn from the distillery for use or consumption within the
6 meaning of Section 5-110 of this title for excise tax determination
7 and reporting requirements;

8 5. To sell spirits produced by the licensee for either on-
9 premises or off-premises consumption to consumers on the licensed
10 distillery premises or in an area controlled by the licensee located
11 contiguous to the licensed distillery premises and at one (1)
12 location controlled by the licensee located in the same county as
13 the licensed distillery premises but not contiguous to the licensed
14 distillery premises. ~~Product~~ Spirits offered for sale by the
15 Oklahoma licensed distiller will have been sold to and shipped to an
16 Oklahoma licensed wine and spirits wholesaler and then made
17 available for purchase by the Oklahoma licensed distiller for sale;
18 and

19 6. To sell spirits at public events such as trade shows or
20 festivals. Products offered for sale by the Oklahoma licensed
21 distiller will have been sold to and shipped to an Oklahoma licensed
22 wine and spirits wholesaler and then made available for purchase by
23 the Oklahoma licensed distiller.

24

1 B. Spirits sold pursuant to paragraphs 5 and 6 of subsection A
2 of this section shall not exceed fifteen thousand (15,000) gallons
3 per calendar year in combination.

4 C. Spirits sold pursuant to paragraphs 5 and 6 of subsection A
5 of this section shall be a final sale. Licensed distillers may
6 offer for sale non-alcoholic substances which may be added to
7 spirits by the consumer after final sale. Substances used for on
8 premise consumption shall be non-alcoholic in nature and shall not
9 be considered part of the manufacturing process.

10 SECTION 6. AMENDATORY 37A O.S. 2021, Section 2-131, is
11 amended to read as follows:

12 Section 2-131. A. A small farm winery license shall authorize
13 the holder thereof:

14 1. To manufacture and bottle wines produced by that small farm
15 winery;

16 2. To bottle and sell wines produced by another small farm
17 winery. In order for a small farm winery to bottle and sell another
18 small farm winery's products, both the selling winery and the buying
19 winery shall be small farm winery permit holders;

20 3. To establish satellite tasting rooms as defined and
21 authorized in ~~this act~~ the Oklahoma Alcoholic Beverage Control Act,
22 where:

23 a. the winemaker's products may be tasted, sampled, sold,
24 and served for on-premises consumption and the

1 winemaker is permitted to sell its products in sealed
2 containers; provided, the small farm winery license is
3 active and in good standing, or

4 b. beer purchased by the licensed small farm winery may
5 be sold for on-premises consumption.

6 The wine sold at a satellite tasting room must have been
7 produced/manufactured by the holder of a small farm winery license
8 and must have all manufacturing taxes paid. The beer sold at a
9 satellite tasting room shall be purchased pursuant to paragraph 6 of
10 this subsection; and

11 4. The small farm winery licensee shall have the same authority
12 as the winemaker licensee;

13 5. To host off-site events pursuant to Section 4 of this act;
14 and

15 6. To purchase beer in retail containers from the holder of a
16 wholesaler, beer distributor, small brewer self-distributor or
17 brewpub self-distributor license or as specifically provided by law
18 and to sell, offer for sale and possess beer for on-premises
19 consumption.

20 B. A small farm wine may display the trademarked "Oklahoma
21 Grown" sticker available from the Oklahoma Grape Industry Council.

22 SECTION 7. AMENDATORY 37A O.S. 2021, Section 3-111, is
23 amended to read as follows:

1 Section 3-111. A. Except as provided in subsection ~~F~~ G of this
2 section, a small brewer is not subject to the termination provisions
3 of this section.

4 B. 1. Except as provided in ~~subsections C, D and E~~ subsection
5 C of this section, no brewer shall terminate a distributor agreement
6 with any beer distributor without establishing good cause for such
7 termination and unless all of the following occur:

- 8 a. ~~the brewer establishes good cause for such~~
9 ~~termination,~~
- 10 ~~b.~~ the beer distributor receives written notification by
11 certified mail, return receipt requested, from the
12 brewer of the alleged noncompliance and is afforded no
13 less than sixty (60) days in which to cure such
14 noncompliance. If not capable of being cured within
15 the sixty-day period, the beer distributor shall begin
16 the cure within the sixty-day period and diligently
17 pursue the cure as promptly as feasible,
- 18 ~~e.~~ b. the beer distributor fails to cure such noncompliance
19 within the allotted cure period, and
- 20 ~~d.~~ c. the brewer provides written notice by certified mail,
21 return receipt requested, to the beer distributor of
22 such continued noncompliance. The notification shall
23 contain a statement of the intention of the brewer to
24 terminate the distributor agreement, the reasons for

1 the termination and the date the termination shall
2 take effect.

3 2. If a beer distributor cures an alleged noncompliance within
4 the cure period provided in subparagraph ~~b~~ a of paragraph 1 of this
5 subsection, any notice of termination from a brewer to a beer
6 distributor shall be null and void.

7 C. A brewer may immediately terminate a distributor agreement,
8 effective upon furnishing written notification to the beer
9 distributor by certified mail, return receipt requested, for any of
10 the following reasons:

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

14 2. The assignment or attempted assignment by the beer
15 distributor for the benefit of creditors, the institution of
16 proceedings in bankruptcy by or against the beer distributor, the
17 dissolution or liquidation of the beer distributor or the insolvency
18 of the beer distributor;

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

23 4. The beer distributor has been convicted of a felony that, in
24 the brewer's sole judgment, adversely affects the goodwill of the

1 beer distributor or brewer; provided, however, an existing
2 stockholder or stockholders, partner or partners, or member or
3 members shall have the right to purchase the stock, partnership
4 interest, or membership interest of the offending stockholder,
5 partner, or member prior to the conviction of the offending
6 stockholder, partner, or member, subject to brewer's approval, which
7 shall not be unreasonably withheld, and if the sale is completed
8 prior to conviction, the provisions of this paragraph shall not
9 apply;

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

15 6. Any attempted transfer or change in beneficial ownership of
16 ~~ownership~~ ten percent (10%) or more of the beer distributor, stock
17 of the beer distributor or stock of any parent corporation of the
18 beer distributor, or any change in ~~the beneficial~~ the ownership or
19 control of any entity having control of the beer distributor,
20 without obtaining the prior written approval of the brewer, which
21 may not be unreasonably withheld, except as may otherwise be
22 permitted pursuant to a written agreement between the parties;

23 7. Fraudulent conduct, by or on the part of the beer
24 distributor or any owner of the beer distributor, or by any employee

1 as to which the beer distributor or any of its owners or its senior
2 management knew or reasonably should have known, in the beer
3 distributor's dealings with the brewer of beer, including the
4 intentional sale of beer outside the brewer's established quality
5 standards, provided however, in the case of fraudulent conduct by a
6 beer distributor employee other than the owner or senior management
7 and only in the event the beer distributor was unaware or should not
8 have been aware of such fraudulent conduct, the beer distributor
9 shall be allowed sixty-day cure period following written notice of
10 such conduct from the brewer, and shall only be terminated for
11 failing to cure the same within sixty (60) days thereof;

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

18 9. Any intentional sale of beer, directly or indirectly, to
19 customers located outside the territory assigned to the beer
20 distributor by the brewer unless expressly authorized by the brewer.

21 ~~Provided, the~~

22 D. Any beer distributor terminated by a brewer under subsection
23 B of this section shall have the opportunity to sell the brewer's
24 ~~brands~~ brand rights for one hundred twenty (120) days after

1 termination in accordance with the distributor agreement. If no
2 such sale occurs, the brewer's newly appointed distributor shall pay
3 the beer distributor the fair market value of the distribution
4 rights, which will be lost or diminished by reason of termination.
5 If the parties cannot agree on the fair market value, the parties
6 shall follow the same procedures as set forth in paragraphs 2
7 through 6 of subsection G of this section.

8 ~~D.~~ E. The brewer shall have the right to terminate an agreement
9 with a beer distributor at any time by giving the beer distributor
10 at least ninety-days' written notice by certified mail, return
11 receipt requested; provided, the brewer shall give a similar notice
12 to all ~~other~~ beer distributors in all other states ~~who have entered~~
13 ~~into the same~~ with which the brewer has a distributor agreement with
14 ~~the brewer.~~

15 ~~E.~~ F. 1. If a particular brand of beer is transferred by
16 purchase or otherwise from a brewer to a successor brewer, ~~the~~
17 ~~following shall occur:~~

18 ~~1.~~ The the successor brewer shall become obligated to all of
19 the terms and conditions of the agreement in effect on the date of
20 succession. This subsection applies regardless of the character or
21 form of the succession. A successor brewer has the right to
22 contractually require its beer distributor to comply with
23 operational standards of performance, if the standards are uniformly
24 established for all of the successor brewer's distributors.

1 Provided, however, where the successor brewer holds a brewer's
2 license in the state as of January 1, 2023, and has an existing
3 distribution agreement with a beer distributor, the successor brewer
4 may terminate the distribution agreement, in whole or in part, in
5 order to transfer the brand rights to the successor brewer's beer
6 distributor with at least sixty (60) days' written notice to the
7 terminated distributor and with termination effective upon payment
8 to the terminated beer distributor the fair market value of the
9 terminated beer distributor's business with respect to the
10 terminated brand or brands. If the successor brewer and terminated
11 beer distributor cannot agree on the fair market value, the parties
12 shall follow the same procedures as set forth in paragraphs 2
13 through 6 of subsection G of this section.

14 2. A successor brewer may, upon written notice, terminate its
15 agreement, in whole or in part, with a beer distributor of the
16 brewer it succeeded, for the purpose of transferring the
17 distribution rights in the beer distributor's territory to a new
18 beer distributor, provided that the successor beer distributor first
19 pays to the existing beer distributor the fair market value of the
20 existing distributor's business with respect to the terminated brand
21 or brands;

22 ~~2.~~ 3. If the successor brewer decides to terminate its
23 agreement with the existing beer distributor for purposes of
24 transfer, the successor brewer shall notify the existing beer

1 distributor in writing of the successor brewer's intent not to
2 appoint the existing beer distributor for all or part of the
3 existing beer distributor's territory. The successor brewer shall
4 mail the notice of termination by certified mail, return receipt
5 requested, to the existing beer distributor. The successor brewer
6 shall include in the notice the names, addresses and telephone
7 numbers of the successor beer distributor or distributors;

8 ~~3.~~

9 4. a. the successor beer distributor shall negotiate with
10 the existing beer distributor to determine the fair
11 market value of the existing beer distributor's right
12 to distribute in the existing beer distributor's
13 territory. The successor beer distributor and the
14 existing beer distributor shall negotiate the fair
15 market value in good faith, and

16 b. the existing beer distributor shall continue to
17 distribute in good faith until payment of the
18 compensation agreed to under subparagraph a of this
19 paragraph, or awarded under paragraph 4 of this
20 subsection, is received; and

21 ~~4.~~

22 5. a. if the successor beer distributor and the existing
23 beer distributor fail to reach a written agreement on
24 the fair market value within thirty (30) days after

1 the existing beer distributor receives the notice
2 required pursuant to paragraph 2 of this subsection,
3 the successor beer distributor or the existing beer
4 distributor shall send a written notice to the other
5 party requesting arbitration pursuant to the Uniform
6 Arbitration Act, Part 2 of Article 22 of Title 13,
7 C.R.S. Arbitration shall be held for the purpose of
8 determining the fair market value of the existing beer
9 distributor's right to distribute in the existing beer
10 distributor territory,

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

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

- 22 (1) is closest to the existing beer distributor, and
- 23 (2) has a population of more than twenty thousand
24 (20,000) people,

- 1 d. any arbitration held pursuant to this paragraph shall
2 be conducted before one impartial arbitrator to be
3 selected by the American Arbitration Association or
4 its successor. The arbitration shall be conducted in
5 accordance with the rules and procedures of the
6 Uniform Arbitration Act, Part 2 of Article 22 of Title
7 13, C.R.S.,
- 8 e. an arbitrator's award in any arbitration held pursuant
9 to this paragraph shall be monetary only and shall not
10 enjoin or compel conduct. Any arbitration held
11 pursuant to this paragraph shall be in lieu of all
12 other remedies and procedures,
- 13 f. the cost of the arbitrator and any other direct costs
14 of an arbitration held pursuant to this paragraph
15 shall be equally divided by the parties engaged in the
16 arbitration. All other costs shall be paid by the
17 party incurring them,
- 18 g. the arbitrator in any arbitration held pursuant to
19 this paragraph shall render a written decision not
20 later than thirty (30) days after the conclusion of
21 the arbitration, unless this time is extended by
22 mutual agreement of the parties and the arbitrator.
23 The decision of the arbitrator is final and binding on
24 the parties. The arbitrator's award may be enforced

1 by commencing a civil action in any court of competent
2 jurisdiction. Under no circumstances may the parties
3 appeal the decision of the arbitrator,

4 h. an existing beer distributor or successor beer
5 distributor who fails to participate in the
6 arbitration hearings in any arbitration held pursuant
7 to this paragraph waives all rights the existing beer
8 distributor or successor beer distributor would have
9 had in the arbitration and is considered to have
10 consented to the determination of the arbitrator, and

11 i. if the existing beer distributor does not receive
12 payment from the successor beer distributor of the
13 settlement or arbitration award required under
14 paragraph 2 or 3 of this subsection within thirty (30)
15 days after the date of the settlement or arbitration
16 award:

17 (1) the existing beer distributor shall remain the
18 beer distributor in the existing beer
19 distributor's territory to at least the same
20 extent that the existing beer distributor
21 distributed the beer immediately before the
22 successor brewer acquired rights to the brand,
23 and
24

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

3 ~~F.~~ G. 1. In addition to termination rights that may be set
4 forth in a distributor agreement, a small brewer ~~who manufactures~~
5 ~~less than twenty five thousand barrels of beer annually~~ may
6 terminate a distributor agreement with any beer distributor;
7 provided, that, prior to the effective date of the termination, the
8 small brewer pays the beer distributor the fair market value of the
9 distribution rights which will be lost or diminished by reason of
10 the termination.

11 2. If such small brewer and beer distributor cannot mutually
12 agree to the fair market value of the applicable distribution rights
13 lost or diminished by reason of the termination, then the brewer
14 shall pay the beer distributor a good faith estimate of the fair
15 market value of the applicable distribution rights.

16 3. If the beer distributor being terminated under paragraph 2
17 of this subsection disputes that the payment made by the small
18 brewer was less than the fair market value of the distribution
19 rights, then the beer distributor may within forty-five (45) days of
20 termination submit the question of fair market value of the
21 applicable distribution rights lost or diminished by reason of the
22 termination to binding arbitration before a panel of three neutral
23 arbitrators appointed in accordance with the commercial arbitration
24 rules of the American Arbitration Association, which panel shall

1 determine by majority decision whether the small brewer's payment
2 meets the requirements of paragraph 2 of this subsection.

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

9 5. If the arbitration panel rules that the payment made by the
10 small brewer to the beer distributor upon termination was more than
11 the fair market value of distribution rights lost or diminished by
12 reason of the termination, then the beer distributor must pay the
13 small brewer the difference between the payment made to the beer
14 distributor and the determined fair market value, plus interest.

15 6. All arbitration fees and expenses shall be equally divided
16 among the parties to the arbitration, except if the arbitration
17 panel determines that the small brewer's payment upon termination
18 was not a good-faith estimate of the fair market value, then the
19 panel may award up to one hundred percent (100%) of the arbitration
20 costs to the ~~small brewer~~ prevailing party.

21 ~~G.~~ H. 1. Any beer distributor or brewer who is aggrieved by a
22 violation of any provision of ~~subsections B and D~~ of this section
23 shall be entitled to the recovery of damages caused by the
24 violation. If a beer distributor is not terminated in accordance

1 with the provisions of this section, damages may additionally
2 include the fair market value of the distribution rights. ~~Except~~
3 ~~for a dispute arising under subsection E of this section, damages~~
4 Damages shall be sought in a civil action in any court of competent
5 jurisdiction.

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

9 ~~H.~~ I. Nothing in this section shall be construed to limit or
10 prohibit good-faith settlements voluntarily entered into by the
11 parties.

12 ~~I.~~ ~~Nothing~~

13 J. Except as otherwise provided herein, nothing in this section
14 shall be construed to give a beer distributor any right to
15 compensation if an agreement with the beer distributor is terminated
16 by a brewer pursuant to ~~subsections B, C and D~~ of this section.

17 ~~J.~~ K. No brewer shall require any beer distributor to waive
18 compliance with any provision of the Oklahoma Alcoholic Beverage
19 Control Act and any provisions of the Oklahoma Alcoholic Beverage
20 Control Act shall supersede any provisions of a distributor
21 agreement in conflict in this section.

22 ~~K.~~ L. No brewer shall charge or accept, and no beer distributor
23 shall pay or provide, in a material way, any money, property,
24 gratuity, rebate, free goods, shipping charges different than those

1 charged for all beer distributors, allowances, thing of value or
2 other inducement, as defined in Section 3-123 of this title, from a
3 beer distributor in exchange for the brewer entering into a
4 distributor agreement with the beer distributor. However, a brewer
5 who also holds a beer distributor license and desires to sell all or
6 a portion of its beer distribution rights and business, or a holder
7 of small brewer license who desires to change its election from
8 self-distribution to the use of a distributor agreement may accept a
9 payment for the fair market value of its existing and established
10 distribution business in the subject territory.

11 ~~L. M.~~ This section shall apply to any agreement entered into
12 and any renewals, extensions, amendments or conduct constituting a
13 modification of a distributor agreement by a brewer or cider
14 manufacturer ~~existing on or after the effective date of this act.~~

15 ~~M. N.~~ Where a cider manufacturer distributes cider through a
16 beer distributor, the rights and obligations of the cider
17 manufacturer, the distributor, a successor cider manufacturer and a
18 successor distributor shall be the same as the rights and
19 obligations provided in this section for a brewer, beer distributor,
20 successor brewer and successor beer distributor.

21 SECTION 8. AMENDATORY 37A O.S. 2021, Section 6-102, as
22 amended by Section 1, Chapter 300, O.S.L. 2022 (37A O.S. Supp. 2022,
23 Section 6-102), is amended to read as follows:

24 Section 6-102. A. No licensee of the ABLE Commission shall:

1 1. Receive, possess or sell any alcoholic beverage except as
2 authorized by the Oklahoma Alcoholic Beverage Control Act and by the
3 license or permit which the licensee holds;

4 2. Employ any person under eighteen (18) years of age in the
5 selling of beer or wine or employ any person under twenty-one (21)
6 years of age in the selling of spirits. Provided:

7 a. a mixed beverage, beer and wine, caterer, public
8 event, special event, bottle club, retail wine or
9 retail beer licensee may employ servers or sales
10 clerks who are at least eighteen (18) years of age,
11 except persons under twenty-one (21) years of age may
12 not serve in designated bar or lounge areas, and

13 b. a mixed beverage, beer and wine, caterer, public
14 event, special event or bottle club licensee may
15 employ or hire musical bands who have musicians who
16 are under eighteen (18) years of age if each such
17 musician is either accompanied by a parent or legal
18 guardian or has on their person, to be made available
19 for inspection upon demand by any employee of the ABLE
20 Commission or law enforcement officer, a written,
21 notarized affidavit from the parent or legal guardian
22 giving the underage musician permission to perform in
23 designated bar or lounge areas;

1 3. Give any alcoholic beverage as a prize, premium or
2 consideration for any lottery, game of chance or skill or any type
3 of competition;

4 4. Use any of the following means or inducements to stimulate
5 the consumption of alcoholic beverages, including but not limited
6 to:

7 a. deliver more than two drinks to one person at one
8 time, except:

9 (1) as provided for serving tasting flights defined
10 in Section 6-102.1 of this title, or

11 (2) up to six (6) bottles or cans of beer in the
12 original packaging for on-premises consumption
13 may be delivered to one person at one time in a
14 reusable container, including but not limited to
15 a bucket or insulated cooler which may be cooled
16 by ice or another cooling method,

17 b. sell or offer to sell to any person or group of
18 persons any drinks at a price that is less than six
19 percent (6%) below the markup of the cost to the mixed
20 beverage licensee; provided, a mixed beverage licensee
21 shall be permitted to offer these drink specials on
22 any particular hour of any particular day and shall
23 not be required to offer these drink specials for an
24 entire calendar week or from open to close, and shall

1 not be required to offer such drink specials at all
2 venues operating under the same mixed beverage
3 license; provided, a mixed beverage licensee selling
4 wine, beer, or cocktails to-go shall be permitted to
5 offer these to-go drinks at a different price than on-
6 premises drinks,

7 c. sell or offer to sell to any person an unlimited
8 number of drinks during any set period of time for a
9 fixed price, except at private functions not open to
10 the public,

11 d. sell or offer to sell drinks to any person or group of
12 persons on any one day or portion thereof at prices
13 less than those charged the general public on that
14 day, except at private functions not open to the
15 public,

16 e. increase the volume of alcoholic beverages contained
17 in a drink without increasing proportionately the
18 price regularly charged for such drink during the same
19 calendar week, or

20 f. encourage or permit, on the licensed premises, any
21 game or contest which involves drinking or the
22 awarding of drinks as prizes.

1 Provided, that the provisions of this paragraph shall not
2 prohibit the advertising or offering of food, entertainment or
3 bottle service in licensed establishments;

4 5. Permit or allow any patron or person to exit the licensed
5 premises with an open container of any alcoholic beverage.

6 Provided, this prohibition shall not be applicable to closed
7 original containers of alcoholic beverages which are carried from
8 the licensed premises of a bottle club by a patron, closed original
9 wine containers removed from the premises of restaurants, hotels and
10 motels, or to closed original containers of alcoholic beverages
11 transported to and from the place of business of a licensed caterer
12 by the caterer or an employee of the caterer;

13 6. Serve or sell alcoholic beverages with an expired license
14 issued by the ABLE Commission;

15 7. Permit any person to be drunk or intoxicated on the
16 licensee's licensed premises; or

17 8. Permit or allow any patron to serve or pour himself or
18 herself any alcoholic beverage, except a licensee may offer a patron
19 self-pour service of beer or wine, or both, from automated devices
20 on licensed premises so long as:

- 21 a. the licensee monitors and has the ability to control
22 the dispensing of such beer or wine, or both, from the
23 automated devices. "Automated device" shall mean any
24 mechanized device capable of dispensing wine or beer,

1 or both, directly to a patron in exchange for
2 compensation that a licensee has received directly
3 from the patron, and

- 4 b. each licensee offering a patron self-pour service of
5 wine or beer, or both, from any automated device shall
6 provide constant video monitoring of the automated
7 device at all times during which the licensee is open
8 to the public. The licensee shall keep recorded
9 footage from the video monitoring for at least sixty
10 (60) days, and shall provide the footage, upon
11 request, to any agent of the Director of the ABLE
12 Commission or other authorized law enforcement agent.

13 B. 1. The compensation required by subparagraph a of paragraph
14 8 of subsection A of this section shall be in the form of a radio
15 frequency identification (RFID) device, mobile application or any
16 other technology approved by the ABLE Commission containing a fixed
17 amount of volume of thirty-two (32) ounces for beer and ten (10)
18 ounces for wine that may be directly exchanged for beer or wine
19 dispensed from the automated device:

- 20 a. RFID devices may be assigned, used or reactivated only
21 during a business day,
22 b. each RFID device shall be obtained from the licensee
23 by a patron,
24

1 c. a licensee shall not issue more than one active RFID
2 device to a patron, and

3 d. an RFID device shall be deemed active if the RFID
4 device contains volume credit or has not yet been used
5 to dispense ten (10) ounces of wine or thirty-two (32)
6 ounces of beer.

7 2. In order to obtain an RFID device from a licensee, each
8 patron shall produce a valid driver license, identification card or
9 other government-issued document that contains a photograph of the
10 individual and demonstrates that the individual is at least twenty-
11 one (21) years of age. Each RFID device shall be programmed to
12 require the production of the patron's valid identification before
13 the RFID device can be used for the first time during any business
14 day or for any subsequent reactivation.

15 3. Each RFID device shall become inactive at the end of each
16 business day.

17 4. Each RFID device shall be programmed to allow the dispensing
18 of no more than ten (10) ounces of wine or thirty-two (32) ounces of
19 beer to a patron:

20 a. once an RFID device has been used to dispense ten (10)
21 ounces of wine or thirty-two (32) ounces of beer to a
22 patron, the RFID device shall become inactive, and

23 b. any patron in possession of an inactive RFID device
24 may, upon production of the patron's valid

1 identification to the licensee or licensee's employee,
2 have the RFID device reactivated to allow the
3 dispensing of an additional ten (10) ounces of wine or
4 thirty-two (32) ounces of beer from an automated
5 device.

6 Paragraphs 1, 2, 3 and 4 of this subsection shall not apply to wine
7 or beer that is dispensed directly to the licensee or the licensee's
8 agent or employee.

9 C. A mixed beverage or beer and wine licensee shall not be
10 deemed to have violated the provisions of paragraph 5 of subsection
11 A of this section if it allowed a patron to leave the licensed
12 premises with an open container of beer or wine only and:

13 1. The otherwise prohibited act was committed during the hours
14 of 8 a.m. to midnight on the day of a scheduled home football game
15 of institutions within The Oklahoma State System of Higher
16 Education, and the establishment is located within two thousand
17 (2,000) feet of the institution;

18 2. The licensee is participating by invitation in a municipally
19 sanctioned art, music or sporting event within city limits when the
20 municipality has provided written notice of the event and a list of
21 invited licensees to the ABLE Commission at least five (5) days
22 prior to the event; or

23 3. The patron remains on the connected, physical property of
24 the licensee or in a public area adjacent to the physical property

1 of the licensee with prior municipal approval; provided, that
2 written notice of the use of the connected, physical property of the
3 licensee or public area shall be provided to the ABLE Commission at
4 least five (5) days prior to such use.

5 SECTION 9. REPEALER 37A O.S. 2021, Section 2-102, as
6 amended by Section 1, Chapter 226, O.S.L. 2019, is hereby repealed.

7 SECTION 10. It being immediately necessary for the preservation
8 of the public peace, health or safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

11

12 59-1-8407 JL 05/23/23

13

14

15

16

17

18

19

20

21

22

23

24