

1 STATE OF OKLAHOMA

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

3 SENATE BILL 639

By: Montgomery

4  
5  
6 AS INTRODUCED

7 An Act relating to alcoholic beverages; amending 37A  
8 O.S. 2021, Section 1-103, which relates to  
9 definitions; adding and modifying definitions; and  
10 providing an effective date.

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

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

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

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

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

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

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

9           5. "Beer" means any beverage containing more than one-half of  
10 one percent (0.50%) of alcohol by volume and obtained by the  
11 alcoholic fermentation of an infusion or decoction of barley, or  
12 other grain, malt or similar products. "Beer" may or may not  
13 contain hops or other vegetable products. "Beer" includes, among  
14 other things, beer, ale, stout, lager beer, porter and other malt or  
15 brewed liquors, but does not include sake, known as Japanese rice  
16 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", as used in the  
23 Oklahoma Alcoholic Beverage Control Act, shall be construed to refer  
24 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,  
12 who is the exclusive broker agent, or the primary source of a  
13 national supply representing a person who manufactures outside of  
14 the state, for human consumption by the use of raw materials or  
15 other ingredients any beer or cider upon which a license fee and a  
16 tax are imposed by any law of this state;

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

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

1 manufacturers or brewers. For the purposes of the distribution of  
2 this product, cider may be distributed by either wine and spirits  
3 wholesalers or beer distributors;

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

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

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

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

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

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

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

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

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

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

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

4 b. as strong beer pursuant to the Alcoholic Beverage  
5 Control Act in effect immediately prior to October 1,  
6 2018,

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

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

16 26. "Good cause" means:

17 a. repeated failure by the distributor to comply with the  
18 material and reasonable provisions of a written  
19 agreement or understanding with the brewer, or

20 b. failure by the distributor to comply with the duty of  
21 good faith;

22 27. "Good faith" means the duty of each party to any  
23 distributor agreement and all officers, employees or agents thereof  
24  
25

1 to act with honesty in fact and within reasonable standards of fair  
2 dealing in the trade;

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

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

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



1       ~~30.~~ 31. "Legal newspaper" means a newspaper meeting the  
2 requisites of a newspaper for publication of legal notices as  
3 prescribed in Sections 101 through 114 of Title 25 of the Oklahoma  
4 Statutes;

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

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

16       ~~33.~~ 34. "Manufacturer" means a distiller, winemaker, rectifier  
17 or bottler of any alcoholic beverage (other than beer) and its  
18 subsidiaries, affiliates and parent companies;

19       ~~34.~~ 35. "Manufacturer's agent" means a salaried or commissioned  
20 salesperson who is the agent authorized to act on behalf of the  
21 manufacturer or nonresident seller in the state;

22       ~~35.~~ 36. "Meals" means foods commonly ordered at lunch or dinner  
23 and at least part of which is cooked on the licensed premises and  
24 requires the use of dining implements for consumption. Provided,

1 that the service of only food such as appetizers, sandwiches, salads  
2 or desserts shall not be considered "meals";

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

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

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

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

1       ~~39.~~ 40. "Motion picture theater" means an establishment which  
2 is licensed by Section 2-110 of this title to sell alcoholic  
3 beverages by the individual drink and where motion pictures are  
4 exhibited, and to which the general public is admitted;

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

8       ~~41.~~ 42. "Nonresident seller" means any person licensed pursuant  
9 to Section 2-135 of this title;

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

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

18       ~~44.~~ 45. "Original package" means any container of alcoholic  
19 beverage filled and stamped or sealed by the manufacturer or brewer;

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

1       ~~46.~~ 47. "Patron" means any person, customer or visitor who is  
2 not employed by a licensee or who is not a licensee;

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

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

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

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

23       ~~49.~~ 50. "Private event" means a social gathering or event  
24 attended by invited guests who share a common cause, membership,

1 business or task and have a prior established relationship. For  
2 purposes of this definition, advertisement for general public  
3 attendance or sales of tickets to the general public shall not  
4 constitute a private event;

5 ~~50.~~ 51. "Public event" means any event that can be attended by  
6 the general public;

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

18 ~~52.~~ 53. "Regulation" or "rule" means a formal rule of general  
19 application promulgated by the ABLE Commission as herein required;

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

1       ~~54.~~ 55. "Retail container for spirits and wines" means an  
2 original package of any capacity approved by the United States  
3 Bureau of Alcohol, Tobacco and Firearms;

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

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

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

20       ~~58.~~ 59. "Small brewer" means a brewer who manufactures less  
21 than sixty-five thousand barrels of beer annually pursuant to a  
22 validly issued Small Brewer License hereunder;

1       ~~59.~~ 60. "Small farm wine" means a wine that is produced by a  
2 small farm winery with seventy-five percent (75%) or more Oklahoma-  
3 grown grapes, berries, other fruits, honey or vegetables;

4       ~~60.~~ 61. "Small farm winery" means a wine-making establishment  
5 that does not annually produce for sale more than fifteen thousand  
6 (15,000) gallons of wine as reported on the United States Department  
7 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of  
8 Wine Premises Operations (TTB Form 5120.17);

9       ~~61.~~ 62. "Sparkling wine" means champagne or any artificially  
10 carbonated wine;

11       ~~62.~~ 63. "Special event" means an entertainment, recreation or  
12 marketing event that occurs at a single location on an irregular  
13 basis and at which alcoholic beverages are sold;

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

22       ~~64.~~ 65. "Strong beer" means beer which, prior to October 1,  
23 2018, was distributed pursuant to the Oklahoma Alcoholic Beverage  
24

1 Control Act, Section 501 et seq. of Title 37 of the Oklahoma  
2 Statutes;

3 ~~65.~~ 66. "Successor brewer" means a primary source of supply, a  
4 brewer, a cider manufacturer or an importer that acquires rights to  
5 a beer or cider brand from a predecessor brewer;

6 ~~66.~~ 67. "Tax Commission" means the Oklahoma Tax Commission;

7 ~~67.~~ 68. "Territory" means a geographic region with a specified  
8 boundary;

9 ~~68.~~ 69. "Wine and spirits wholesaler" or "wine and spirits  
10 distributor" means and includes any sole proprietorship or  
11 partnership licensed to distribute wine and spirits in the state.  
12 The term "wholesaler", as used in the Oklahoma Alcoholic Beverage  
13 Control Act, shall be construed to refer to a wine and spirits  
14 wholesaler;

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

22 ~~70.~~ 71. "Winemaker" means and includes any person or  
23 establishment who manufactures for human consumption any wine upon  
24



1 which a license fee and a tax are imposed by any law of this state;  
2 and

3 ~~71.~~ 72. "Satellite tasting room" means a licensed establishment  
4 operated off the licensed premises of the holder of a small farm  
5 winery or winemaker license, which serves wine for on-premises or  
6 off-premises consumption.

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

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

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