

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 646

By: Bice of the Senate

and

Mulready of the House

8
9
10 COMMITTEE SUBSTITUTE

11 [alcoholic beverages - sales - licensing -
12 codification - effective date]

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

16 SECTION 1. AMENDATORY 37 O.S. 2011, Section 163.11, as
17 last amended by Section 1, Chapter 205, O.S.L. 2013 (37 O.S. Supp.
18 2016, Section 163.11), is amended to read as follows:

19 Section 163.11 A. It shall be unlawful for any person to
20 maintain or operate any place where low-point beer, as herein
21 defined, is sold for consumption on or off the premises without
22 first securing a permit issued by the district court clerk of the
23 county in which the premises are located.

1 B. 1. The person applying for a permit must file a verified
2 application every three (3) years stating that he or she has never
3 been convicted of violating any of the laws prohibiting the traffic
4 in any spirituous, vinous, fermented or malt liquors or the laws
5 related to the Uniform Controlled Dangerous Substances Act in this
6 state or another state or the United States, or of any of the
7 gambling laws of this state or another state or the United States,
8 within three (3) years immediately preceding the date of his or her
9 petition, or any of the laws commonly called "Prohibition Laws", or
10 had any permit or license to sell low-point beer revoked in any
11 county of this state within twelve (12) months.

12 2. A person who has been convicted of a felony shall not be
13 eligible for a permit unless the person received a pardon for the
14 felony or a period of ten (10) years has elapsed since the
15 completion of the sentence imposed for the felony.

16 C. No permit shall be issued to sell low-point beer for on-
17 premises consumption unless the person applying for such permit
18 shall have signed an affidavit stating that the location of the
19 building in which low-point beer is to be sold is not prohibited by
20 the provisions of Section 163.27 of this title.

21 D. A fee of One Hundred Fifty Dollars (\$150.00) shall be
22 charged for the issuance or renewal of such three-year permit, which
23 fee shall be deposited in the county court fund, in addition to
24 other fees required by law.

1 E. Upon petition being filed, the district court clerk shall
2 give fifteen (15) days' notice for an initial application, and it is
3 the applicant's responsibility to cause the same to be posted by the
4 entrance on the front of the building in which said low-point beer
5 is to be sold and to file proof of posting in such case; and a copy
6 of said notice shall also be mailed to the district attorney, the
7 sheriff and the chief of police or marshal of any city or town in
8 which the business is to be operated. The notice shall contain the
9 name of the applicant and the location of the place of business.
10 The initial permit shall be valid for a period of three (3) years
11 and shall expire if not renewed with proper showing required by
12 subsection B of this section, and upon payment of proper fees. A
13 permit may be renewed within ten (10) days of expiration, upon
14 proper application pursuant to subsection B of this section and
15 payment of the proper fees, but without the payment of any late
16 fees. Provided, however, that if a proper application under
17 subsection B of this section is filed within eleven (11) days but
18 not more than thirty (30) days after the expiration date of the
19 permit, upon payment of a fee of One Hundred Dollars (\$100.00) in
20 addition to the initial permit fee, the court clerk is authorized to
21 treat the application as one for renewal and to issue a renewal
22 permit to the applicant, if all requirements have otherwise been met
23 by the applicant. A renewal permit granted during the thirty-day
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1 grace period shall become effective upon the date of its issuance by
2 the court clerk.

3 F. An application shall be denied upon any ground that would
4 require the permit to be revoked.

5 G. A person who has obtained a permit pursuant to this section
6 and who ceases to maintain or operate any place where low-point beer
7 is sold for consumption on or off the premises shall be entitled to
8 receive a refund of the permit fee from the district court clerk
9 prorated with respect to the amount of time remaining until
10 expiration of the permit, upon surrender of the existing permit to
11 the district court clerk. The manner and prorated refund shall be
12 prescribed by the Administrative Director of the Courts.

13 H. If there are no protests and the petition is sufficient on
14 its face, then the permit shall be granted by the district court
15 clerk. Provided, that if any citizen of the county files a written
16 protest setting forth objections, then the district court clerk
17 shall advise the chief judge who shall assign such petition to a
18 district judge or associate district judge for hearing.

19 I. The application for the permit must be verified and in
20 writing, contain the information above required, and must be set for
21 hearing on a date named in the notice required to be posted.

22 J. All testimony before the district court shall be under oath.
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1 K. A judge of the district court, upon five (5) days' notice to
2 the person holding the permit, shall revoke the permit for any one
3 of the following reasons:

4 1. Drunkenness of the person holding the permit or permitting
5 any intoxicated person to loiter in or around his or her place of
6 business;

7 2. Person under the influence of drugs or any controlled
8 substance holding the permit or permitting any drugged or drug
9 abusing person to loiter in or around his or her place of business;

10 3. The sale to any person under twenty-one (21) years of age of
11 low-point beer;

12 4. Permitting persons under the age of twenty-one (21) in a
13 separate or enclosed bar area which has as its main purpose the
14 selling or serving of low-point beer for consumption on the
15 premises, in violation of the provisions of Sections 241 through 246
16 of this title;

17 5. Nonpayment of any of the taxes or license fees imposed by
18 the provisions of Section 163.1 et seq. of this title on complaint
19 of the Oklahoma Tax Commission;

20 6. Violating any of the laws of the state commonly called
21 "Prohibition Laws" or violating any of the gambling laws of the
22 state or permitting anyone to violate any of the laws in such places
23 or violating any of the provisions of Section 163.1 et seq. of this
24 title;

1 7. Conviction for the violation of any of the laws of this
2 state, another state or the United States for the sale or possession
3 of intoxicating liquors within three (3) years immediately preceding
4 the issuance of the dealer's license;

5 8. Violating any law pertaining to the use, possession,
6 manufacture or sale of any controlled substance pursuant to the
7 Uniform Controlled Dangerous Substances Act, or violation of any
8 rule promulgated or order issued to control a new product or
9 noncontrolled product or substance pursuant to Section 2-201 of
10 Title 63 of the Oklahoma Statutes, or violation of any drug or
11 narcotic law of the United States; or

12 9. A material false statement in the application.

13 L. After the revocation of any permit, for any of the above
14 reasons, except paragraph 5 of subsection K of this section for
15 nonpayment of taxes, or license fees, or except as otherwise
16 provided in this subsection, no new permit shall be issued to the
17 same person or to a relative of such person for the same location or
18 premises prior to the expiration of a period of one (1) year from
19 the date of the revocation. Upon the fourth or subsequent
20 revocation of a permit for a violation of paragraph 3 or 4 of
21 subsection K of this section, no new permit shall be issued to the
22 same person or to a relative of such person for the same location or
23 premises prior to the expiration of a period of three (3) years from
24 the date of the revocation.

1 M. On or before the tenth day of each month each district court
2 clerk shall file with the Oklahoma Tax Commission, on forms
3 prescribed and furnished by the Commission, a report showing the
4 name, address, and county permit number of each person to whom a
5 county permit has been issued or whose permit has been revoked, or
6 who shall have been refused a county permit, during the previous
7 calendar month. In case of the revocation of a permit by a judge of
8 the district court, the district court clerk shall within five (5)
9 days report the action to the Oklahoma Tax Commission. If county
10 permits shall have been issued, revoked or refused during the month,
11 the district court clerk shall make a report accordingly to the
12 Commission.

13 N. 1. Upon application to and approval by the court clerk of
14 the district court, an applicant to be a retail dealer as defined by
15 Section 163.2 of this title who meets the requirements of this
16 section and Section 163.11a of this title may be granted a special
17 event permit after payment of a fee of Twenty-five Dollars (\$25.00)
18 in addition to other fees required by law, which fees shall not be
19 refundable or apportionable. A special event permit for the sale
20 and on-premises consumption of low-point beer shall be issued
21 fourteen (14) days after the date of filing with the district court
22 of the application, unless a protest is filed as provided in this
23 subsection.

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1 2. Every application for a special event permit shall contain
2 proof that a copy of the application has been mailed to the chief of
3 police or marshal of the city or town, and the sheriff and district
4 attorney of the county, wherein the special event is to be located.

5 a. If no objection is filed within ten (10) days after
6 service of notice of the application, the court clerk
7 may grant the special event permit.

8 b. If a written objection or request for restrictions is
9 filed within ten (10) days after service of the
10 application, a judge of the district court, upon five
11 (5) days' notice to the applicant, chief of police or
12 marshal of the city or town, and sheriff and district
13 attorney of the county, where the event is to occur,
14 shall determine whether the special permit should be
15 granted, restricted or denied, based upon the totality
16 of circumstances concerning the proposed event,
17 including, but not limited to, the location of the
18 event, qualifications of the applicant, history of the
19 applicant, and specific concerns regarding public
20 safety.

21 3. A special event permit issued under this subsection shall
22 authorize the holder thereof to sell and distribute low-point beer
23 for a period not to exceed ten (10) consecutive days from the date
24 of issuance. A separate permit shall be required for each

1 individual place of business, whether permanent or a temporary
2 assemblage. Provided, retail dealers shall not be required to
3 obtain a special permit for each bar or service unit within the same
4 enclosed area or within the general vicinity of each other for
5 events held outside a physical structure. A special event permit
6 shall not be renewable. A municipality shall not, by ordinance or
7 otherwise, refuse to issue a special event permit or special event
8 license for any event for which the applicant has received a special
9 event permit as provided in this section.

10 O. That the person demanded, was shown, and reasonably relied
11 upon proof of age shall be a rebuttable presumption to any action
12 brought pursuant to this section. A person cited for violating this
13 section shall be deemed to have reasonably relied upon proof of age,
14 and such person shall not be found guilty of such violation if:

15 1. The individual who purchased or received the low-point beer
16 presented what a reasonable person would have believed was a driver
17 license or other government-issued photo identification purporting
18 to establish that such individual was twenty-one (21) years of age
19 or older; or

20 2. The person cited for the violation confirmed the validity of
21 the driver license or other government-issued photo identification
22 presented by such individual by performing a transaction scan by
23 means of a transaction scan device.

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1 Provided, that this defense shall not relieve from liability any
2 person cited for a violation of this section if such person failed
3 to exercise reasonable diligence to determine whether the physical
4 description and picture on the driver license or other government-
5 issued photo identification was that of the individual who presented
6 it. The availability of the defense described in this subsection
7 does not affect the availability of any other defense under any
8 other provision of law.

9 P. It shall not be deemed a violation of this section or the
10 Low-Point Beer Distribution Act for a licensed wholesaler to sell
11 low-point beer to a retailer who holds a permit from the Oklahoma
12 Tax Commission pursuant to Section 163.7 of this title, regardless
13 of whether or not such retailer holds a valid permit from the
14 district court of the relevant county pursuant to this section or
15 such district court permit has expired. Any permit issued by the
16 Oklahoma Tax Commission pursuant to Section 163.7 of this title
17 shall be deemed valid, and licensed wholesalers shall have no
18 obligation to independently determine the validity of such permit.

19 SECTION 2. AMENDATORY 37 O.S. 2011, Section 163.18G, is
20 amended to read as follows:

21 Section 163.18G Any aggrieved person shall have a cause of
22 action for violations of the provisions of the Low-Point Beer
23 Distribution Act and Section 231 of this title and may recover
24 damages or obtain injunctive relief or both; provided however, that

1 no licensed wholesaler shall be liable to any aggrieved person for
2 the sale of low-point beer to a retailer who holds a permit from the
3 Oklahoma Tax Commission pursuant to Section 163.7 of this title,
4 regardless of whether such retailer holds a valid permit from the
5 district court of the relevant county pursuant to Section 163.11 of
6 this title or such district court permit has expired. Any permit
7 issued by the Oklahoma Tax Commission pursuant to Section 163.7 of
8 this title shall be deemed valid, and licensed wholesalers shall
9 have no obligation to independently determine the validity of such
10 permit.

11 SECTION 3. AMENDATORY 37 O.S. 2011, Section 163.18H, is
12 amended to read as follows:

13 Section 163.18H A. In addition to any other powers conferred
14 on the Oklahoma Tax Commission to impose penalties for violations of
15 Sections 163.1 through 163.25 and 231 of this title, whenever in the
16 judgment of the Commission any person has committed an act which
17 constitutes a violation of the Low-Point Beer Distribution Act and
18 Section 231 of this title, the Commission may:

19 1. After notice and hearing, issue a cease and desist order to
20 any person that is licensed as a manufacturer or wholesaler;

21 2. Impose a fine of not more than Five Thousand Dollars
22 (\$5,000.00) for each violation in the event that after the issuance
23 of an order to cease and desist the illegal activity, the person
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1 that the order is directed to commits any act in violation of the
2 order; and

3 3. Make application to the appropriate court for an order
4 enjoining such acts or practices, and upon a showing by the
5 Commission that such violations have occurred, an injunction,
6 restraining order, or such other order as may be appropriate shall
7 be granted by such court, without bond.

8 B. Each day a violation is continuing shall constitute a
9 separate offense.

10 C. Administrative fines imposed pursuant to the provisions of
11 this section shall be enforceable in the district courts of this
12 state.

13 D. All administrative fines collected by the Commission
14 pursuant to the provisions of this section shall be forwarded to the
15 State Treasurer for deposit in the General Revenue Fund.

16 E. Any manufacturer or wholesaler injured by a violation of the
17 Low-Point Beer Distribution Act may:

18 1. Bring an action for recovery of damages. Judgment shall be
19 entered for actual damages plus reasonable attorney's fees and
20 costs; and

21 2. Bring an action to restrain and enjoin the violation of the
22 Low-Point Beer Distribution Act.

23 F. Notwithstanding the provisions of subsections A, B, C, D and
24 E of this section, no licensed wholesaler shall be subject to any

1 fines, orders or other penalties imposed by the Oklahoma Tax
2 Commission as a result of the sale of low-point beer to a retailer
3 who holds a permit from the Oklahoma Tax Commission pursuant to
4 Section 163.7 of this title, regardless of whether such retailer
5 holds a valid permit from the district court of the relevant county
6 pursuant to Section 163.11 of this title or such district court
7 permit has expired. Any permit issued by the Oklahoma Tax
8 Commission pursuant to Section 163.7 of this title shall be deemed
9 valid, and licensed wholesalers shall have no obligation to
10 independently determine the validity of such permit.

11 SECTION 4. AMENDATORY 37 O.S. 2011, Section 163.20, is
12 amended to read as follows:

13 Section 163.20 A. Any person who shall engage in the sale of
14 low-point beer in violation of the provisions of Sections 163.1
15 through 163.25 of this title shall be deemed guilty of a
16 misdemeanor, and upon conviction thereof shall be punished for such
17 misdemeanor as provided for by the general statutes of this state.

18 B. Any person who engages in the sale or shipping of low-point
19 beer in violation of the provisions of Section ~~4~~ 163.26 of this ~~act~~
20 title on or after the effective date of Section 20.1 of Title 21 of
21 the Oklahoma Statutes, upon conviction, shall be guilty of a
22 Schedule G felony if the sale or delivery is made to a person under
23 twenty-one (21) years of age, or a misdemeanor if the sale or
24 delivery is made to a person twenty-one (21) years of age or older.

1 Any person who engages in the sale or shipping of low-point beer in
2 violation of the provisions of Section ~~±~~ 163.26 of this ~~act~~ title
3 before the effective date of Section 20.1 of Title 21 of the
4 Oklahoma Statutes shall be guilty of a felony punishable by
5 imprisonment for not more than two (2) years, if the sale or
6 delivery is made to a person under twenty-one (21) years of age, or
7 a misdemeanor, if the sale or delivery is made to a person twenty-
8 one (21) years of age or older. The fine for a violation of Section
9 ~~±~~ 163.26 of this ~~act~~ title shall be not more than Five Thousand
10 Dollars (\$5,000.00). In addition, if such person holds a permit
11 issued by the Oklahoma Tax Commission pursuant to Section 163.7 of
12 this title, the permit shall be revoked pursuant to the procedures
13 set forth in Section 163.18H of this title.

14 C. Notwithstanding the provisions of subsections A and B of
15 this section, no licensed wholesaler shall be guilty of a
16 misdemeanor or subject to any fines or license revocation as a
17 result of the sale of low-point beer to a retailer who holds a
18 permit from the Oklahoma Tax Commission pursuant to Section 163.7 of
19 this title, regardless of whether such retailer holds a valid permit
20 from the district court of the relevant county pursuant to Section
21 163.11 of this title or such district court permit has expired. Any
22 permit issued by the Oklahoma Tax Commission pursuant to Section
23 163.7 of this title shall be deemed valid, and licensed wholesalers
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1 shall have no obligation to independently determine the validity of
2 such permit.

3 SECTION 5. AMENDATORY 37 O.S. 2011, Section 521, as last
4 amended by Section 1, Chapter 367, O.S.L. 2016 (37 O.S. Supp. 2016,
5 Section 521), is amended to read as follows:

6 Section 521. A. A brewer license shall authorize the holder
7 thereof: To manufacture, bottle, package, and store beer on
8 licensed premises; to sell beer in this state to holders of Class B
9 wholesaler licenses and retail licenses and to sell beer out of this
10 state to qualified persons; to sell beer produced by the licensee to
11 consumers twenty-one (21) years of age or older on the premises of
12 the brewery; and to serve free samples of beer produced by the
13 licensee to visitors twenty-one (21) years of age or older. For
14 purposes of this section, no visitor may sample more than a total of
15 twelve (12) fluid ounces of beer per day. The brewer must restrict
16 the distribution and consumption of beer samples to an area within
17 the licensed premises designated by the brewer. A current floor
18 plan that includes the designated sampling area must be on file with
19 the Oklahoma Alcoholic Beverage Laws Enforcement (ABLE) Commission.
20 No visitor under twenty-one (21) years of age shall be permitted to
21 enter this designated sampling area when samples are being
22 distributed or consumed. Samples and sales may only be distributed
23 or consumed between 10:00 a.m. and 9:00 p.m. Samples and sales of
24 beer made or served by a brewery under this section shall not be

1 considered a "sale" of beer within the meaning of Article XXVIII of
2 the Oklahoma Constitution or Section 506 of this title; however,
3 such samples and sales of beer shall be considered beer removed or
4 withdrawn from the brewery for "use or consumption" within the
5 meaning of Section 542 of this title for excise tax determination
6 and reporting requirements.

7 B. A distiller license shall authorize the holder thereof: To
8 manufacture, bottle, package, and store spirits on licensed
9 premises; to sell spirits in this state to licensed wholesalers and
10 manufacturers only; to sell spirits out of this state to qualified
11 persons; to purchase from licensed distillers and rectifiers in this
12 state, and import spirits from without this state for manufacturing
13 purposes in accordance with federal laws and regulations.

14 C. A winemaker license shall authorize the holder thereof: To
15 manufacture (including such mixing, blending and cellar treatment as
16 authorized by federal law), bottle, package, and store on licensed
17 premises wine containing not more than twenty-four percent (24%)
18 alcohol by volume, provided the bottle or package sizes authorized
19 shall be limited to the capacities approved by the United States
20 Alcohol and Tobacco Tax and Trade Bureau; to sell wine in this state
21 to licensed wholesalers and manufacturers; to sell bottles of wine
22 produced at the winery from grapes and other fruits and berries
23 grown in this state, if available, to consumers on the premises of
24 the winery; to serve visitors on the licensed premises samples of

1 wine produced on the premises; to serve samples of wine produced at
2 the winery at festivals and trade shows; to sell wine produced at
3 the winery, in original sealed containers, at festivals and trade
4 shows; to sell wine out of this state to qualified persons; to
5 purchase from licensed winemakers, distillers and rectifiers in this
6 state, and to import into this state wine, brandy and fruit spirits
7 for use in manufacturing in accordance with federal laws and
8 regulations; provided, a winemaker either within or without this
9 state that annually produces no more than ten thousand (10,000)
10 gallons of wine may elect to sell and self-distribute the wine
11 produced by such winemaker directly to licensed retail package
12 stores and restaurants in this state; and provided further that:

13 1. Any such winemaker which elects to directly sell its wine to
14 package stores and restaurants shall not also use a licensed
15 wholesale distributor as a means of distribution, and shall be
16 required to sell its wines to every package store and restaurant
17 licensee who desires to purchase the same, on the same price basis
18 and without discrimination;

19 2. If a winemaker or winery sells directly to a retail package
20 store or restaurant, the winemaker shall transport the wine from the
21 winemaker's winery to the premises where the wine is to be delivered
22 only in vehicles owned or leased by the winemaker and not by common
23 or private contract carrier and shall obtain all necessary permits
24 as required by the Oklahoma Alcoholic Beverage Control Act; and

1 3. If the production volume limit applicable to winemakers is
2 ruled to be unconstitutional by a court of competent jurisdiction,
3 then no winemaker shall be permitted to directly sell its wine to
4 retail package stores or restaurants in this state.

5 D. A winemaker self-distribution license shall authorize a
6 licensed winemaker within or without this state which is permitted
7 by Section 3 of Article XXVIII of the Oklahoma Constitution and
8 subsection C of this section, to distribute its wine directly to
9 retail package stores and restaurants in this state and that elects
10 to do so, to sell and deliver its wines directly to licensed retail
11 package stores and restaurants in this state in full case lots only,
12 and in accordance with the provisions of the Oklahoma Alcoholic
13 Beverage Control Act and such rules as the ABLE Commission shall
14 adopt.

15 E. A rectifier license shall authorize the holder thereof: To
16 rectify spirits and wines, bottle, package, and store same on the
17 licensed premises; to sell spirits and wines in this state to
18 licensed wholesalers and manufacturers only; to sell spirits and
19 wines out of this state to qualified persons; to purchase from
20 licensed manufacturers in this state; and to import into this state
21 for manufacturing purposes spirits and wines in accordance with
22 federal laws and regulations.

23 F. 1. A wholesaler license shall authorize the holder thereof:
24 To purchase and import into this state spirits and wines from

1 persons authorized to sell same who are the holders of a nonresident
2 seller license, and their agents who are the holders of
3 manufacturers agent licenses; to purchase spirits and wines from
4 licensed distillers, rectifiers and winemakers in this state; to
5 purchase spirits and wines from licensed wholesalers, to the extent
6 set forth in paragraphs 2 and 3 of this subsection; to sell in
7 retail containers in this state to retailers, mixed beverage,
8 caterer, special event, public event, hotel beverage or
9 airline/railroad beverage licensees, spirits and wines which have
10 been received and unloaded at the bonded warehouse facilities of the
11 wholesaler before such sale; to sell to licensed wholesalers, to the
12 extent set forth in paragraphs 2 and 3 of this subsection, spirits
13 and wines which have been received and unloaded at the bonded
14 warehouse facilities of the wholesaler before such sale; and to sell
15 spirits and wines out of this state to qualified persons. Provided,
16 however, sales of spirits and wine in containers with a capacity of
17 less than one-twentieth (1/20) gallon by a holder of a wholesaler
18 license shall be in full case lots and in the original unbroken
19 case. Wholesalers shall be authorized to place such signs outside
20 their place of business as are required by Acts of Congress and by
21 such laws and regulations promulgated under such Acts.

22 2. Wholesalers are prohibited from purchasing annually in
23 excess of fifteen percent (15%) of their total spirits inventory and
24 fifteen percent (15%) of their total wine inventory from one or more

1 wholesalers. Wholesalers are also prohibited from purchasing
2 annually in excess of fifteen percent (15%) of their inventory of
3 any individual brand of spirits or wine from one or more
4 wholesalers. The volume of spirits and wine and of each brand that
5 each wholesaler is permitted to purchase annually from other
6 wholesalers shall be calculated by the ABLE Commission by
7 multiplying fifteen percent (15%) by:

- 8 a. the total volume of spirits sales of the wholesaler,
9 by liter, from the previous calendar year, and
- 10 b. the total volume of wine sales of the wholesaler, by
11 liter, from the previous calendar year, and
- 12 c. the volume of sales of each brand of spirits or wine
13 of the wholesaler, by liter, from the previous
14 calendar year.

15 A wholesaler who did not post any sales of spirits, wine or of a
16 particular brand in the previous calendar year shall be deemed to
17 have sold the same volume of spirits, wine or of a particular brand
18 as the wholesaler posting the smallest volumes of sales in spirits,
19 wine or of a particular brand for that year for the purposes of this
20 paragraph. Notwithstanding the foregoing, wholesalers shall not
21 purchase any inventory in spirits or wine from any other wholesaler
22 until such time that the purchasing wholesaler possesses an
23 inventory valued at no less than Two Hundred Fifty Thousand Dollars
24 (\$250,000.00). Inventory valuation shall be based on the original

1 actual price paid by the purchasing wholesaler to the nonresident
2 seller for the inventory.

3 3. A wholesaler may sell spirits and wine to other wholesalers
4 or purchase spirits and wines from other wholesalers without
5 complying with paragraph 2 of this subsection in the case of the
6 sale, purchase, or other transfer or acquisition of the entire
7 business of a wholesaler, including the inventory of spirits and
8 wine.

9 4. A wholesaler license shall authorize the holder thereof to
10 operate a single bonded warehouse with a single central office
11 together with delivery facilities at a location in this state only
12 at the principal place of business for which the wholesaler license
13 was granted.

14 5. All licensed wholesalers shall register prices, purchase and
15 keep on hand or have on order a fifteen-day supply of all brands
16 constituting the top eighteen brands in total sales by all Oklahoma
17 wholesalers during the past twelve-month period, according to the
18 records of the ABLE Commission as revised by the ABLE Commission
19 quarterly; provided, however, that not more than three brands of any
20 particular nonresident seller shall be included in the top-brands
21 classification. All purchase orders for these top eighteen brands
22 must show an expected due delivery date. These purchase orders may
23 only be canceled with prior approval of the Director of the ABLE
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1 Commission, unless a wholesaler shall have in its warehouse a
2 fifteen-day supply of merchandise on such purchase order.

3 In order to allow the ABLE Commission to determine the top
4 eighteen brands, wholesalers must submit to the ABLE Commission
5 every sixty (60) days a sworn affidavit listing their top twenty-
6 five brands in sales for the previous sixty (60) days, excluding
7 sales to wholesalers. Such affidavits shall be submitted in
8 conjunction with the original price postings of wholesalers.

9 A fifteen-day supply of a particular brand for a particular
10 wholesaler shall be based upon the market share of the wholesaler,
11 determined by first multiplying the total number of liters of such
12 brand sold by all wholesalers to all retailers during the previous
13 calendar year by the percentage that the total sales of wine and
14 spirits of the particular wholesaler, in liters, for such calendar
15 year bears to the total sales of wine and spirits, in liters,
16 reported by all wholesalers for such calendar year; and then
17 dividing by twenty-four (24); provided, that a fifteen-day supply
18 for a wholesaler who has not been in business for the entirety of
19 the previous calendar year shall be deemed to be equal to that of
20 the wholesaler who was in business for the entirety of the previous
21 calendar year and who reported the lowest volume of sales of wine
22 and spirits, in liters, of any wholesaler having been in business
23 for such period.

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1 G. A Class B wholesaler license shall authorize the holder
2 thereof: To purchase and import into this state beer from persons
3 authorized to sell same who are the holders of nonresident seller
4 licenses, and their agents who are the holders of manufacturers
5 agent licenses; to purchase beer from licensed brewers and Class B
6 wholesalers in this state; to sell in retail containers to
7 retailers, mixed beverage, caterer, special event, public event,
8 hotel beverage, and airline/railroad beverage licensees in this
9 state, beer which has been unloaded and stored at the holder's self-
10 owned or leased and self-operated warehouse facilities for a period
11 of at least twenty-four (24) hours before such sale; and to sell
12 beer in this state to Class B wholesalers and out of this state to
13 qualified persons, including federal instrumentalities and voluntary
14 associations of military personnel on federal enclaves in this state
15 over which this state has ceded jurisdiction.

16 H. A package store license shall authorize the holder thereof:
17 To purchase alcohol, spirits, beer, and wine in retail containers
18 from the holder of a brewer, wholesaler or Class B wholesaler
19 license and to purchase wine from a winemaker who is permitted and
20 has elected to self-distribute as provided in Section 3 of Article
21 XXVIII of the Oklahoma Constitution and to sell same on the licensed
22 premises in such containers to consumers for off-premises
23 consumption only and not for resale; provided, wine, beer, and
24 spirits may be sold to charitable organizations that are holders of

1 charitable alcoholic beverage auction or charitable alcoholic
2 beverage event licenses. All alcoholic beverages that are sold by a
3 package store are to be sold at ordinary room temperature.

4 I. A mixed beverage license shall authorize the holder thereof:
5 To purchase alcohol, spirits, beer or wine in retail containers from
6 the holder of a wholesaler or Class B wholesaler license or as
7 specifically provided by law and to sell, offer for sale and possess
8 mixed beverages for on-premises consumption only; provided, the
9 holder of a mixed beverage license issued for an establishment which
10 is also a restaurant may purchase wine directly from a winemaker who
11 is permitted and has elected to self-distribute as provided in
12 Section 3 of Article XXVIII of the Oklahoma Constitution.

13 Sales and service of mixed beverages by holders of mixed
14 beverage licenses shall be limited to the licensed premises of the
15 licensee unless the holder of the mixed beverage license also
16 obtains a caterer license or a mixed beverage/caterer combination
17 license. A mixed beverage license shall only be issued in counties
18 of this state where the sale of alcoholic beverages by the
19 individual drink for on-premises consumption has been authorized. A
20 separate license shall be required for each place of business. No
21 mixed beverage license shall be issued for any place of business
22 functioning as a motion picture theater, as defined by Section 506
23 of this title. A mixed beverage licensee whose main purpose is
24 hosting live performance art presentations may utilize the services

1 of a licensed caterer for its alcoholic beverage service as long as
2 it is not open to the public more than one hundred twenty (120) days
3 per year.

4 J. A bottle club license shall authorize the holder thereof: To
5 store, possess and mix alcoholic beverages belonging to members of
6 the club and to serve such alcoholic beverages for on-premises
7 consumption to club members. A bottle club license shall only be
8 issued in counties of this state where the sale of alcoholic
9 beverages by the individual drink for on-premises consumption has
10 not been authorized. A separate license shall be required for each
11 place of business.

12 K. A caterer license shall authorize the holder thereof: To
13 sell mixed beverages for on-premises consumption incidental to the
14 sale or distribution of food at particular functions, occasions, or
15 events which are private and temporary in nature. A caterer license
16 shall not be issued in lieu of a mixed beverage license. A caterer
17 license shall only be issued or utilized in counties of this state
18 where the sale of alcoholic beverages by the individual drink for
19 on-premises consumption has been authorized. A separate license
20 shall be required for each place of business.

21 A licensed caterer shall be authorized to sell mixed beverages
22 for on-premises consumption incidental to the distribution of food
23 at temporary private functions, at temporary public events that are
24 licensed and approved by the ABLE Commission, and on the premises of

1 a mixed beverage licensee whose main purpose is the hosting of live
2 performing art presentations and is not open to the public more than
3 one hundred twenty (120) days per year.

4 L. 1. An annual special event license shall authorize the
5 holder thereof: To sell and distribute mixed beverages for
6 consumption on the premises for which the license has been issued
7 for up to four events to be held over a period not to exceed one (1)
8 year, not to exceed two such events in any three-month period. For
9 purposes of this paragraph, an event shall not exceed a period of
10 ten (10) consecutive days. An annual special event license shall
11 only be issued in counties of this state where the sale of alcoholic
12 beverages by the individual drink for on-premises consumption has
13 been authorized. The holder of an annual special event license
14 shall provide written notice to the ABLE Commission of each special
15 event not less than ten (10) days before the event is held.

16 2. A quarterly special event license shall authorize the holder
17 thereof: To sell and distribute mixed beverages for consumption on
18 the premises for which the license has been issued for up to three
19 events to be held over a period not to exceed three (3) months. For
20 purposes of this paragraph, an event shall not exceed a period of
21 ten (10) consecutive days. A quarterly special event license shall
22 only be issued in counties of this state where the sale of alcoholic
23 beverages by the individual drink for on-premises consumption has
24 been authorized. The holder of a quarterly special event license

1 shall provide written notice to the ABLE Commission of each special
2 event not less than ten (10) days before the event is held.

3 3. An annual public event license shall authorize the holder
4 thereof: to sell and distribute mixed beverages for consumption on
5 the premises for which the license has been issued for up to six
6 events to be held over a period not to exceed one (1) year. The
7 applicant for an annual public event license, who does not already
8 hold a license issued by the ABLE Commission, shall make application
9 not less than sixty (60) days before its first event. The ABLE
10 Commission shall have the authority to waive the sixty-day
11 requirement at its discretion. For purposes of this paragraph, an
12 event shall not exceed a period of three (3) consecutive days. An
13 annual public event license shall only be issued in counties of this
14 state where the sale of alcoholic beverages by the individual drink
15 for on-premises consumption has been authorized. The holder of an
16 annual public event license shall provide written notice to the ABLE
17 Commission of each subsequent public event not less than ten (10)
18 days before the event is held. A public event license shall not be
19 used in lieu of a mixed beverage license. The holder of an annual
20 public event license may choose to utilize the services of a
21 licensed caterer to provide and distribute the alcoholic beverages
22 at their events. When the applicant chooses to utilize the services
23 of a licensed caterer, the applicant shall declare upon application
24 which licensed caterer will be used. The licensed caterer shall be

1 responsible for payment of all applicable mixed beverage taxes
2 through the existing Mixed Beverage Tax Permit issued to his or her
3 business by the Oklahoma Tax Commission.

4 4. A one-time public event license shall authorize the holder
5 thereof: to sell and distribute mixed beverages for consumption on
6 the premises for which the license has been issued. The applicant
7 for a one-time public event license, who does not already hold a
8 license issued by the ABLE Commission, shall make application not
9 less than sixty (60) days before the event. The ABLE Commission
10 shall have the authority to waive the sixty-day requirement at its
11 discretion. For purposes of this paragraph, an event shall not
12 exceed a period of three (3) consecutive days. A public event
13 license shall only be issued in counties of this state where the
14 sale of alcoholic beverages by the individual drink for on-premises
15 consumption has been authorized. A public event license shall not
16 be used in lieu of a mixed beverage license. The holder of a one-
17 time public event license may choose to utilize the services of a
18 licensed caterer to provide and distribute the alcoholic beverages
19 at his or her event. When the applicant chooses to utilize the
20 services of a licensed caterer, the applicant shall declare upon
21 application which licensed caterer will be used. The licensed
22 caterer shall be responsible for payment of all applicable mixed
23 beverage taxes through the existing Mixed Beverage Tax Permit issued
24 to his or her business by the Oklahoma Tax Commission.

1 M. A hotel beverage license shall authorize the holder thereof:
2 To sell or serve alcoholic beverages in 50 milliliter spirits, 187
3 milliliter wine, and 12-ounce malt beverage containers which are
4 distributed from a hotel room mini-bar. A hotel beverage license
5 shall only be issued in counties of this state where the sale of
6 alcoholic beverages by the individual drink for on-premises
7 consumption has been authorized. A hotel beverage license shall
8 only be issued to a hotel or motel as defined by Section 506 of this
9 title which is also the holder of a mixed beverage license.
10 Provided, that application may be made simultaneously for both such
11 licenses. A separate license shall be required for each place of
12 business.

13 N. An airline/railroad beverage license shall authorize the
14 holder thereof: To sell or serve alcoholic beverages in or from any
15 size container on a commercial passenger airplane or railroad
16 operated in compliance with a valid license, permit or certificate
17 issued under the authority of the United States or this state, even
18 though the airplane or train, in the course of its travel, may cross
19 an area in which the sale of alcoholic beverages by the individual
20 drink is not authorized and to store alcoholic beverages in sealed
21 containers of any size at any airport or station regularly served by
22 the licensee, in accordance with rules promulgated by the Alcoholic
23 Beverage Laws Enforcement Commission. Alcoholic beverages purchased
24 by the holder of an airline/railroad license from the holder of a

1 wholesaler license shall be presumed to be purchased for consumption
2 outside the State of Oklahoma or in interstate commerce, and shall
3 be exempt from the excise tax provided for in Section 553 of this
4 title.

5 O. An agent license shall authorize the holder thereof: To
6 represent only the holders of licenses within this state, other than
7 retailers, authorized to sell alcoholic beverages to retail dealers
8 in Oklahoma, and to solicit and to take orders for the purchase of
9 alcoholic beverages from retailers including licensees authorized to
10 sell alcoholic beverages by the individual drink for on-premises
11 consumption. Such license shall be issued only to agents and
12 employees of the holder of a license under the Oklahoma Alcoholic
13 Beverage Control Act, but no such license shall be required of an
14 employee making sales of alcoholic beverages on licensed premises of
15 the employee's principal. No person holding an agent license shall
16 be entitled to a manufacturers agent license.

17 P. An employee license shall authorize the holder thereof: To
18 work in a package store, mixed beverage establishment, beer and wine
19 establishment, bottle club, public event or any establishment where
20 alcohol or alcoholic beverages are sold, mixed, or served. Persons
21 employed by a mixed beverage licensee, beer and wine licensee,
22 public event licensee or a bottle club who do not participate in the
23 service, mixing, or sale of mixed beverages shall not be required to
24 have an employee license. Provided, however, that a manager

1 employed by a mixed beverage licensee, public event licensee or a
2 bottle club shall be required to have an employee license whether or
3 not the manager participates in the service, mixing or sale of mixed
4 beverages. Applicants for an employee license must have a health
5 card issued by the county in which they are employed, if the county
6 issues such a card. Employees of special event, caterer, unless
7 catering a mixed beverage licensed premises, or airline/railroad
8 beverage licensees shall not be required to obtain an employee
9 license. Persons employed by a hotel licensee who participate in
10 the stocking of hotel room mini-bars or in the handling of alcoholic
11 beverages to be placed in such devices shall be required to have an
12 employee license.

13 Q. An industrial license may be issued to persons desiring to
14 import, transport, and use alcohol for the following purposes:

15 1. Manufacture of patent, proprietary, medicinal,
16 pharmaceutical, antiseptic, and toilet preparations;

17 2. Manufacture of extracts, syrups, condiments, and food
18 products; and

19 3. For use in scientific, chemical, mechanical, industrial, and
20 medicinal products and purposes.

21 No other provisions of the Oklahoma Alcoholic Beverage Control
22 Act shall apply to alcohol intended for industrial, medical,
23 mechanical or scientific use.

24

1 Any person receiving alcohol under authority of an industrial
2 license who shall use, permit, or cause same to be used for purposes
3 other than authorized purposes specified above, and all such
4 alcohol, shall be liable to all provisions of the Oklahoma Alcoholic
5 Beverage Control Act, including payment of tax thereon.

6 No provisions of the Oklahoma Alcoholic Beverage Control Act
7 shall apply to alcohol withdrawn by any person free of federal tax
8 under a tax-free permit issued by the United States government, if
9 such alcohol is received, stored, and used as authorized by federal
10 laws.

11 R. A carrier license may be issued to any common carrier
12 operating under a certificate of convenience and necessity issued by
13 any duly authorized federal or state regulatory agency. Such
14 license shall authorize the holder thereof to transport alcoholic
15 beverages other than wine sold directly by a winemaker or winery to
16 a retail package store or restaurant into, within, and out of this
17 state under such terms, conditions, limitations, and restrictions as
18 the ABLE Commission may prescribe by order issuing such license and
19 by regulations.

20 S. A private carrier license may be issued to any carrier other
21 than a common carrier described in subsection Q of this section.
22 Such license shall authorize the holder thereof to transport
23 alcoholic beverages other than wine sold directly by a winemaker or
24 winery to a retail package store or restaurant into, within, or out

1 of this state under such terms, conditions, limitations, and
2 restrictions as the ABLE Commission may prescribe by order issuing
3 such license and by regulations. No carrier license or private
4 carrier license shall be required of licensed brewers, distillers,
5 winemakers, rectifiers, wholesalers, or Class B wholesalers, to
6 transport alcoholic beverages from the place of purchase or
7 acquisition to the licensed premises of such licensees and from such
8 licensed premises to the licensed premises of the purchaser in
9 vehicles owned or leased by such licensee when such transportation
10 is for a lawful purpose and not for hire.

11 No carrier license or private carrier license shall be required
12 of the holder of a package store, mixed beverage, caterer, special
13 event, hotel beverage, public event or airline/railroad license to
14 pick up alcoholic beverage orders from the licensees' wholesaler or
15 Class B wholesaler from whom they are purchased, and to transport
16 such alcoholic beverages from the place of purchase or acquisition
17 to the licensed premise of such licensees in vehicles owned or under
18 the control of such licensee or a licensed employee of such licensee
19 under such terms, conditions, limitations and restrictions as the
20 ABLE Commission may prescribe.

21 T. A bonded warehouse license shall authorize the holder
22 thereof: To receive and store alcoholic beverages for the holders of
23 storage licenses on the licensed premises of the bonded warehouse
24 licensee. No goods, wares or merchandise other than alcoholic

1 beverages may be stored in the same bonded warehouse with alcoholic
2 beverages. The holder of a bonded warehouse license shall furnish
3 and file with the ABLE Commission a bond running to all bailers of
4 alcoholic beverages under proper storage licenses and their
5 assignees (including mortgagees or other bona fide lienholders)
6 conditioned upon faithful performance of the terms and conditions of
7 such bailments.

8 U. A storage license may be issued to a holder of a brewer,
9 distiller, winemaker, rectifier, wholesaler, Class B wholesaler,
10 nonresident seller, package store, mixed beverage, caterer, public
11 event or hotel beverage license, and shall authorize the holder
12 thereof: To store alcoholic beverages in a public warehouse holding
13 a bonded warehouse license, and no goods, wares or merchandise other
14 than alcoholic beverages may be stored in the same warehouse with
15 alcoholic beverages in private warehouses owned or leased and
16 operated by such licensees elsewhere than on their licensed
17 premises. Provided:

18 1. A storage license issued to a Class B wholesaler shall
19 permit the storage of light beer and permit the sale and delivery to
20 retailers from the premises covered by such license;

21 2. Any licensee who is the holder of a mixed beverage/caterer
22 combination license or the holder of a mixed beverage license and a
23 hotel beverage license who is issued a storage license shall store
24

1 all inventories of alcoholic beverages either on the premises of the
2 mixed beverage establishment or in the warehouse;

3 3. A storage license shall not be required for a special event
4 licensee storing alcoholic beverages for use at a subsequent event;

5 4. A storage license shall be required for a public event
6 licensee storing alcoholic beverages for use at a subsequent event;
7 and

8 5. Notwithstanding the provisions of subsection I of this
9 section or any other provision of this title, a licensee who wholly
10 owns more than one licensed mixed beverage establishment may store
11 alcoholic beverages for each of the licensed establishments in one
12 location under one storage license. Alcoholic beverages purchased
13 and stored pursuant to the provisions of a storage license, for one
14 licensed mixed beverage establishment may be transferred by a
15 licensee to another licensed mixed beverage establishment which is
16 wholly owned by the same licensee. Notice of such a transfer shall
17 be given in writing to the Oklahoma Tax Commission and the ABLE
18 Commission within three (3) business days of the transfer. The
19 notice shall clearly show the quantity, brand and size of every
20 transferred bottle or case.

21 V. A sacramental wine supplier license shall authorize the
22 holder thereof: To sell, ship or deliver sacramental wine to any
23 religious corporation or society of this state holding a valid
24 exemption from taxation issued pursuant to Section 501(a) of the

1 Internal Revenue Code, 1986, and listed as an exempt organization in
2 Section 501(c)(3) of the Internal Revenue Code, 1986, of the United
3 States, as amended.

4 W. A beer and wine license shall authorize the holder thereof:
5 To purchase beer and wine in retail containers from the holder of a
6 wholesaler or Class B wholesaler license or as specifically provided
7 by law and to sell, offer for sale and possess beer and wine for on-
8 premises consumption only; provided, the holder of a beer and wine
9 license issued for an establishment which is also a restaurant may
10 purchase wine from a winemaker who is permitted and has elected to
11 self-distribute as provided in Section 3 of Article XXVIII of the
12 Oklahoma Constitution.

13 Sales and service of beer and wine by holders of beer and wine
14 licenses shall be limited to the licensed premises of the licensee
15 unless the holder of the beer and wine license also obtains a
16 caterer license. A beer and wine license shall only be issued in
17 counties of this state where the sale of alcoholic beverages by the
18 individual drink for on-premises consumption has been authorized. A
19 separate license shall be required for each place of business. No
20 beer and wine license shall be issued for any place of business
21 functioning as a motion picture theater, as defined by Section 506
22 of this title. No spirits shall be stored, possessed or consumed on
23 the licensed premises of a beer and wine licensee.

24

1 X. A charitable auction or charitable alcoholic beverage event
2 license may be issued to a charitable organization exempt from
3 taxation under Section 501(c)(3), (4), (5), (6), (7), (8), (9),
4 (10), or (19) of the United States Internal Revenue Code. The
5 charitable alcoholic beverage event license shall authorize the
6 holder thereof to conduct a wine, spirit and/or beer event which may
7 consist of one or more of a wine, spirit and/or beer tasting event,
8 a wine, spirit and/or beer dinner event or a wine, spirit and/or
9 beer auction, which may be either a live auction conducted by an
10 auctioneer or a silent auction for which:

11 1. Bid sheets are accepted from interested bidders at the
12 event;

13 2. The holders of tickets are allowed to bid online for a
14 period not exceeding thirty (30) days prior to the event; or

15 3. Both bid sheets are accepted at the event and online bids
16 are accepted pursuant to paragraph 2 of this subsection.

17 A charitable alcoholic beverage event shall be conducted solely
18 to raise funds for charitable purposes. A charitable alcoholic
19 beverage license will allow the event attendees access to tastings,
20 samples, dinners, and alcoholic beverages as parts of their entrance
21 fee or ticket price. Wine, spirits and/or beer used in, served, or
22 consumed at a charitable alcoholic beverage event may be purchased
23 by the charitable organization or donated by any person or entity.
24 The charitable alcoholic beverage event license shall be issued for

1 a period not exceeding four (4) days. Only eight such licenses may
2 be issued to an organization in any twelve-month period. The
3 charitable organization holding a charitable alcoholic beverage
4 event license shall not be required to obtain a special event
5 license. Charitable auction and charitable alcoholic beverage event
6 license holders may also utilize a licensed caterer to provide
7 additional alcohol services at the event and on the premises. The
8 charitable auction license shall authorize the holder thereof to
9 auction wine, spirits, and/or beer purchased from a retail package
10 store or received as a gift from an individual if the auction is
11 conducted to raise funds for charitable purposes. The charitable
12 auction license shall be issued for a period not to exceed two (2)
13 days. Only four such licenses shall be issued to an organization in
14 any twelve-month period. The maximum amount of wine, spirits,
15 and/or beer auctioned pursuant to the charitable auction license
16 shall not exceed fifty (50) gallons. All wine, beer, and spirits
17 auctioned pursuant to the charitable auction license shall be
18 registered and all fees and taxes shall be paid in accordance with
19 the Oklahoma Alcoholic Beverage Control Act.

20 Y. A mixed beverage/caterer combination license shall authorize
21 the holder thereof: To purchase or sell mixed beverages as
22 specifically provided by law for the holder of a mixed beverage
23 license or a caterer license. All provisions of the Oklahoma
24 Alcoholic Beverage Control Act applicable to mixed beverage licenses

1 or caterer licenses, or the holders thereof, shall also be
2 applicable to mixed beverage/caterer combination licenses or the
3 holders thereof, except where specifically otherwise provided. A
4 mixed beverage/caterer combination license shall only be issued in
5 counties of this state where the sale of alcoholic beverages by the
6 individual drink for on-premises consumption has been authorized. A
7 separate license shall be required for each place of business.

8 A licensed mixed beverage/caterer licensee shall be authorized
9 to sell mixed beverages for on-premises consumption incidental to
10 the distribution of food at temporary private functions, at
11 temporary public events that are licensed and approved by the ABLE
12 Commission, and on the premises of a mixed beverage licensee whose
13 main purpose is the hosting of live art presentations and is not
14 open to the public more than one hundred twenty (120) days per year.

15 Z. A small farm winery license shall authorize the holder
16 thereof: To manufacture and bottle wines produced by that small
17 farm winery. In addition, a small farm winery license authorizes
18 the holder of that permit to bottle and sell wines produced by
19 another small farm winery. In order for a small farm winery to
20 bottle and sell another small farm winery's products, both the
21 selling winery and the buying winery shall be small farm winery
22 permit holders. A small farm wine may display the trademarked
23 "Oklahoma Grown" sticker available from the Oklahoma Grape Industry
24 Council.

1 AA. In the event any portion of this section is declared
2 invalid for any reason, the invalid portion shall be severed and the
3 rest and remainder of the section shall be saved and given full
4 force and application.

5 BB. Except as provided in Sections 554.1 and 554.2 of this
6 title with respect to cities, towns and counties, and except as may
7 be provided under Title 68 of the Oklahoma Statutes with respect to
8 the Oklahoma Tax Commission, no license or permit other than
9 licenses as provided under the Oklahoma Alcoholic Beverage Control
10 Act shall be required of any licensee by any agency, instrumentality
11 or political subdivision of this state to engage in any activity
12 covered by the Oklahoma Alcoholic Beverage Control Act anywhere
13 within the State of Oklahoma and no agency, instrumentality or
14 political subdivision of this state shall interfere with the ABLE
15 Commission's regulation of, or a wholesaler's performance of, the
16 sale, distribution, possession, handling or marketing of alcoholic
17 beverages on any premises of any licensee as defined in Section 506
18 of this title. Any license issued by the ABLE Commission under this
19 title may be relied upon by other licensees as a valid license. No
20 other licensee shall have any obligation to independently determine
21 the validity of such license or be held liable solely as a
22 consequence of another licensee's failure to maintain a valid
23 license.
24

1 SECTION 6. AMENDATORY 37 O.S. 2011, Section 554.1, as
2 amended by Section 15, Chapter 298, O.S.L. 2014 (37 O.S. Supp. 2016,
3 Section 554.1), is amended to read as follows:

4 Section 554.1 Cities and towns are hereby authorized to levy an
5 annual occupational tax for the privilege of operating as a
6 retailer, mixed beverage, beer and wine, caterer, public event or
7 special event licensee, bottle club, manufacturer, wholesaler or
8 Class B wholesaler, within their respective jurisdictions, not to
9 exceed the state license fee for such licensees; provided that the
10 aforementioned tax shall be levied only by the city or town in which
11 such licensee has his principal place of business. This section
12 shall not give any city or town any right to determine or regulate
13 the issuance of any license, except as specifically provided for in
14 this section, as the Alcoholic Beverage Laws Enforcement Commission
15 shall have exclusive authority as to issuance and regulations of
16 said licenses and no city or town may prescribe rules or regulations
17 in conflict with or in addition to the statutes of this state or the
18 rules of the ABLE Commission. No licensee shall be held liable for
19 engaging in business otherwise authorized under this title with any
20 other retailer, mixed beverage, beer and wine, caterer, public event
21 or special event licensee, bottle club, manufacturer, wholesaler or
22 Class B wholesaler solely because such other party has failed to pay
23 any occupational tax due under this section.

24

1 Cities or towns which levy an occupational tax under this
2 section shall make an annual report to the ABLE Commission, covering
3 the fiscal year, showing the number and class of licensees subject
4 to said tax, and the amount of money received therefrom, which
5 information is to be included in the annual report of the ABLE
6 Commission submitted to the Governor, and transmitted to the
7 Legislature.

8 SECTION 7. AMENDATORY 37 O.S. 2011, Section 554.2, as
9 amended by Section 16, Chapter 298, O.S.L. 2014 (37 O.S. Supp. 2016,
10 Section 554.2), is amended to read as follows:

11 Section 554.2 Counties are hereby authorized to levy an annual
12 occupational tax for the privilege of operating as a mixed beverage,
13 beer and wine, caterer, public event or special event licensee or as
14 a bottle club, within their respective jurisdictions and not located
15 in a city or town levying an occupation tax as provided by Section
16 554.1 of this title, not to exceed the state license fee for such
17 licensees; provided that the aforementioned tax shall be levied only
18 by the county in which such licensee has his or her principal place
19 of business. All revenues derived from any such annual occupational
20 tax shall be deposited in the general revenue fund of the county.
21 This section shall not give any county any right to determine or
22 regulate the issuance of any license, except as specifically
23 provided for in this section, as the Alcoholic Beverage Laws
24 Enforcement Commission shall have exclusive authority as to issuance

1 and regulations of said licenses and no county may prescribe rules
2 or regulations in conflict with or in addition to the statutes of
3 this state or the rules of the ABLE Commission. No licensee shall
4 be held liable for engaging in business otherwise authorized under
5 this act with any other retailer, mixed beverage, beer and wine,
6 caterer, public event or special event licensee, bottle club,
7 manufacturer, wholesaler or Class B wholesaler solely because such
8 other party has failed to pay any occupational tax due under this
9 section.

10 Counties which levy an occupational tax under this section shall
11 make an annual report to the ABLE Commission, covering the fiscal
12 year, showing the number and class of licensees subject to said tax,
13 and the amount of money received therefrom, which information is to
14 be included in the annual report of the ABLE Commission submitted to
15 the Governor, and transmitted to the Legislature.

16 SECTION 8. AMENDATORY Section 3, Chapter 366, O.S.L.
17 2016 (37A O.S. Supp. 2016, Section 1-103), is amended to read as
18 follows:

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

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

23 2. "Alcohol" means and includes hydrated oxide of ethyl, ethyl
24 alcohol, ethanol or spirits of wine, from whatever source or by

1 whatever process produced. It does not include wood alcohol or
2 alcohol which has been denatured or produced as denatured in
3 accordance with Acts of Congress and regulations promulgated
4 thereunder;

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

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

13 5. "Beer" means any beverage of alcohol by volume and obtained
14 by the alcoholic fermentation of an infusion or decoction of barley,
15 or other grain, malt or similar products. "Beer" may or may not
16 contain hops or other vegetable products. "Beer" includes, among
17 other things, beer, ale, stout, lager beer, porter and other malt or
18 brewed liquors, but does not include sake, known as Japanese rice
19 wine;

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

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

1 distribution license. The term "distributor", as used in this act,
2 shall be construed to refer to a beer distributor;

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

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

12 10. "Brand extension" means:

13 a. after the effective date of this act, any brand of
14 beer or cider introduced by a manufacturer in this
15 state which either:

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

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

21 b. any brand of beer that a manufacturer, the majority of
22 whose total volume of all brands of beer distributed
23 in this state by such manufacturer on January 1, 2016,
24 was distributed as low-point beer, desires to sell,

1 introduces, begins selling or theretofore has sold and
2 desires to continue selling a strong beer in this
3 state which either:

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

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

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

15 12. "Brewpub" means ~~a licensed~~ an establishment operated on the
16 ~~premises of, or on premises located contiguous to, a small brewer,~~
17 that manufactures less than ten thousand (10,000) barrels of beer
18 annually pursuant to a validly issued Brewpub License hereunder and
19 prepares and serves food and beverages, including alcoholic
20 beverages, for on-premises consumption;

21 13. "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

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

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

7 15. "Convicted" and "conviction" mean and include a finding of
8 guilt resulting from a plea of guilty or nolo contendere, the
9 decision of a court or magistrate or the verdict of a jury,
10 irrespective of the pronouncement of judgment or the suspension
11 thereof;

12 16. "Director" means the Director of the ABLE Commission;

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

21 18. "Distributor agreement" means the written agreement between
22 the distributor and manufacturer as set forth in Section 78 of this
23 act;

24

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

3 20. "Dual strength beer" means a brand of beer that,
4 immediately prior to ~~the effective date of this act~~ April 15, 2017,
5 was being sold and distributed in this state:

6 a. as a low-point beer pursuant to the Low-Point Beer
7 Distribution Act in effect immediately prior to the
8 effective date of this act, and

9 b. as strong beer pursuant to the Alcoholic Beverage
10 Control Act in effect immediately prior to the
11 effective date of this act,

12 and continues to be sold and distributed as such on October 1, 2018.

13 Dual strength beer does not include a brand of beer that arose as a
14 result of a brand extension as defined in this section;

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

21 22. "Good cause" means:

22 a. failure by the distributor to comply with the material
23 and reasonable provisions of a written agreement or
24 understanding with the manufacturer, or

1 b. failure by the distributor to comply with the duty of
2 good faith;

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

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

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

19 26. "Legal newspaper" means a newspaper meeting the requisites
20 of a newspaper for publication of legal notices as prescribed in
21 Sections 101 through 114 of Title 25 of the Oklahoma Statutes;

22 27. "Licensee" means any person holding a license under the
23 Oklahoma Alcoholic Beverage Control Act, and any agent, servant or
24 employee of such licensee while in the performance of any act or

1 duty in connection with the licensed business or on the licensed
2 premises;

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

9 29. "Manufacturer" means a brewer, distiller, winemaker,
10 rectifier or bottler of any alcoholic beverage and its subsidiaries,
11 affiliates and parent companies;

12 30. "Manufacturer's agent" means a salaried or commissioned
13 salesperson who is the agent authorized to act on behalf of the
14 manufacturer or nonresident seller in the state;

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

20 32. "Mini-bar" means a closed container, either refrigerated in
21 whole or in part, or nonrefrigerated, and access to the interior of
22 which is:

23 a. restricted by means of a locking device which requires
24 the use of a key, magnetic card or similar device, or

1 b. controlled at all times by the licensee;

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

11 34. "Mixed beverages" means one or more servings of a beverage
12 composed in whole or part of an alcoholic beverage in a sealed or
13 unsealed container of any legal size for consumption on the premises
14 where served or sold by the holder of a mixed beverage, beer and
15 wine, caterer, public event, charitable event or special event
16 license;

17 35. "Motion picture theater" means a place where motion
18 pictures are exhibited and to which the general public is admitted,
19 but does not include a place where meals, as defined by this
20 section, are served, if only persons over twenty-one (21) years of
21 age are admitted;

22 36. "Nonresident seller" means any person licensed pursuant to
23 Section ~~47~~ 2-135 of this ~~act~~ title;

24

1 37. "Retail salesperson" means a salesperson soliciting orders
2 from and calling upon retail alcoholic beverage stores with regard
3 to his or her product;

4 38. "Occupation" as used in connection with "occupation tax"
5 means the sites occupied as the places of business of the
6 manufacturers, wholesalers, beer distributors, retailers, mixed
7 beverage licensees, on-premises beer and wine licensees, bottle
8 clubs, caterers, public event and special event licensees;

9 39. "Original package" means any container of alcoholic
10 beverage filled and stamped or sealed by the manufacturer;

11 40. "Package store" means any sole proprietor or partnership
12 that qualifies to sell wine, beer and/or spirits for off-premise
13 consumption and that is not a grocery store, convenience store or
14 drug store, or other retail outlet that is not permitted to sell
15 wine or beer for off-premise consumption;

16 41. "Patron" means any person, customer or visitor who is not
17 employed by a licensee or who is not a licensee;

18 42. "Person" means an individual, any type of partnership,
19 corporation, association, limited liability company or any
20 individual involved in the legal structure of any such business
21 entity;

22 43. "Premises" means the grounds and all buildings and
23 appurtenances pertaining to the grounds including any adjacent
24 premises if under the direct or indirect control of the licensee and

1 the rooms and equipment under the control of the licensee and used
2 in connection with or in furtherance of the business covered by a
3 license. Provided that the ABLE Commission shall have the authority
4 to designate areas to be excluded from the licensed premises solely
5 for the purpose of:

6 a. allowing the presence and consumption of alcoholic
7 beverages by private parties which are closed to the
8 general public, or

9 b. allowing the services of a caterer serving alcoholic
10 beverages provided by a private party.

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

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

20 45. "Public event" means any event that can be attended by the
21 general public;

22 46. "Rectifier" means any person who rectifies, purifies or
23 refines spirits or wines by any process (other than by original and
24 continuous distillation, or original and continuous processing, from

1 mash, wort, wash or other substance, through continuous closed
2 vessels and pipes, until the production thereof is complete), and
3 any person who, without rectifying, purifying or refining spirits,
4 shall by mixing (except for immediate consumption on the premises
5 where mixed) such spirits, wine or other liquor with any material,
6 manufactures any spurious, imitation or compound liquors for sale,
7 under the name of whiskey, brandy, rum, gin, wine, spirits, cordials
8 or any other name;

9 47. "Regulation" or "rule" means a formal rule of general
10 application promulgated by the ABLE Commission as herein required;

11 48. "Restaurant" means an establishment that is licensed to
12 sell alcoholic beverages by the individual drink for on-premises
13 consumption and where food is prepared and sold for immediate
14 consumption on the premises;

15 49. "Retail container for spirits and wines" means an original
16 package of any capacity approved by the United States Bureau of
17 Alcohol, Tobacco and Firearms;

18 50. "Retailer" means a package store, grocery store,
19 convenience store or drug store licensed to sell alcoholic beverages
20 for off-premise consumption pursuant to a Retail Spirits License,
21 Retail Wine License or Retail Beer License;

22 51. "Sale" means any transfer, exchange or barter in any manner
23 or by any means whatsoever, and includes and means all sales made by
24 any person, whether as principal, proprietor or as an agent, servant

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

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

10 53. "Small brewer" means a brewer ~~who~~ that manufactures less
11 than twenty-five thousand (25,000) barrels of beer annually pursuant
12 to a validly issued Small Brewer License hereunder or a Brewpub that
13 manufactures less than ten thousand (10,000) barrels of beer
14 annually pursuant to a validly issued Brewpub License hereunder;

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

18 55. "Small farm winery" means a wine-making establishment that
19 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 56. "Sparkling wine" means champagne or any artificially
24 carbonated wine;

1 57. "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 58. "Spirits" means any beverage other than wine or beer, which
5 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 59. "Strong beer" means beer which, prior to the effective date
13 of this act, was distributed pursuant to the Oklahoma Alcoholic
14 Beverage Control Act, Section 501 et seq. of Title 37 of the
15 Oklahoma Statutes;

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

19 61. "Tax Commission" means the Oklahoma Tax Commission;

20 62. "Territory" means a geographic region with a specified
21 boundary;

22 63. "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 this act, shall be construed to
2 refer to a wine and spirits wholesaler; and

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

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

13 SECTION 9. AMENDATORY Section 4, Chapter 366, O.S.L.
14 2016 (37A O.S. Supp. 2016, Section 1-104), is amended to read as
15 follows:

16 Section 1-104. A. The Alcoholic Beverage Laws Enforcement
17 Commission created in Section 1 of Article XXVIII of the Oklahoma
18 Constitution is hereby ~~re-created~~ re-created. The purpose of the
19 Commission shall be to enforce the alcoholic beverage laws of the
20 ~~State~~ state, and the Commission shall have such power and authority
21 to enforce such laws, rules and regulations as shall be prescribed
22 by the Oklahoma Alcoholic Beverage Control Act.

23 B. The Commission shall consist of seven (7) members, to be
24 appointed by the Governor with the advice and consent of the State

1 Senate; provided, members serving on ~~the effective date of this act~~
2 October 1, 2017, shall continue to serve until such time as their
3 terms would have expired pursuant to the provisions of Section 1 of
4 Article XXVIII of the Oklahoma Constitution. Five of the members
5 shall be at-large members representing the lay citizenry. The
6 remaining two members shall be persons with law enforcement
7 experience in this state. Any time there is a vacancy on the
8 Commission, the Governor shall appoint a replacement, with the
9 advice and consent of the State Senate, within ninety (90) days.

10 C. Members of the Commission shall be appointed for a term of
11 five (5) years.

12 D. No more than four members of the Commission shall be
13 appointed from the same political party. No more than two members
14 of the Commission shall be appointed from the same federal
15 congressional district.

16 E. No member of the Commission shall hold any license
17 authorized by the Oklahoma Alcoholic Beverage Control Act, or have
18 any interest in any capacity, in the manufacture, sale, distribution
19 or transportation of alcoholic beverages.

20 F. The members of the Commission shall be removable from office
21 for cause as other officers not subject to impeachment.

22 G. The Commission shall appoint a Director, whose duties shall
23 be defined as provided in Section § 1-108 of this ~~act~~ title.

24

1 H. The State of Oklahoma shall take all necessary steps to
2 ensure the timely implementation of Enrolled Senate Joint Resolution
3 No. 68 of the 2nd Session of the 55th Oklahoma Legislature, if
4 approved by the voters. Consistent with this objective, the ABLE
5 Commission shall have the power to issue interim licenses prior to
6 October 1, 2018, as follows:

7 1. Except for the sale of wine or beer to the public, an
8 interim license shall allow all qualified retail wine and retail
9 beer licensees to perform all activities permissible under a full
10 license including but not limited to purchasing, stocking and
11 storing the wine and/or full-strength beer prior to October 1, 2018.
12 In order to qualify for an interim license, the licensee must
13 satisfy all the requirements set forth in Article XXVIII A of the
14 Oklahoma Constitution and this act. The interim license shall
15 convert to a full license on October 1, 2018;

16 2. Package stores may install refrigerated coolers for the
17 storage of beer and wine prior to October 1, 2018, provided the
18 refrigerated coolers shall not be used to cool product below room
19 temperature ~~until after~~ prior to October 1, 2018; and

20 3. An interim license shall allow all qualified wine and
21 spirits wholesalers and beer distributors to perform all activities
22 permissible under a full license including but not limited to
23 selling and delivering wine and/or full-strength beer to all
24 qualified retail wine and retail beer licensees. In order to

1 qualify for an interim license, the wine and spirits wholesaler and
2 beer distributor must comply with the provisions set forth in
3 Article XXVIII A of the Oklahoma Constitution and this act. The
4 interim license shall convert to a full license on October 1, 2018.

5 Provided, however, that a manufacturer is only permitted to sell
6 beer or cider to a beer distributor holding a valid interim license
7 pursuant to this section as follows:

- 8 a. such sales may begin no sooner than September 1, 2018,
- 9 b. the beer distributor must be assigned a beer
10 distributor territory by the manufacturer pursuant to
11 a distributor agreement to begin October 1, 2018, and
- 12 c. the interim license only permits sales to retailers by
13 the interim license in the distribution territory as
14 set forth in the distributor agreement.

15 I. No retail wine or retail beer licensee may sell wine and/or
16 beer, other than low-point beer, and no package store may sell
17 refrigerated wine and/or beer, prior to October 1, 2018. The sale
18 or refrigeration of wine and/or beer in violation of this subsection
19 shall result in the revocation of the interim license and a monetary
20 fine of Twenty-five Thousand ~~dollars~~ Dollars (\$25,000.00).

21 SECTION 10. AMENDATORY Section 13, Chapter 366, O.S.L.
22 2016 (37A O.S. Supp. 2016, Section 2-101), is amended to read as
23 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 shall be

13 determined by the latest Federal Decennial Census:

- 14 a. Retail Spirits License for cities and towns from 200
- 15 to 2,500 population.....\$305.00
- 16 b. Retail Spirits License for cities and towns from 2,501
- 17 to 5,000 population..... \$605.00
- 18 c. Retail Spirits License for cities and towns over 5,000
- 19 population.....\$905.00
- 20 10. Retail Wine License..... \$1,000.00
- 21 11. Retail Beer License..... \$500.00
- 22 12. Mixed Beverage License..... \$1,005.00
- 23 (initial license)
- 24 \$905.00

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

1	21.	Agent License.....	\$55.00
2	22.	Employee License.....	\$30.00
3	23.	Industrial License.....	\$23.00
4	24.	Carrier License.....	\$23.00
5	25.	Private Carrier License.....	\$23.00
6	26.	Bonded Warehouse License.....	\$190.00
7	27.	Storage License.....	\$23.00
8	28.	Nonresident, Seller License or Manufacturer's	
9		License.....	\$750.00
10	29.	Manufacturer's Agent License.....	\$55.00
11	30.	Sacramental Wine Supplier License.....	\$100.00
12	31.	Charitable Auction License.....	\$1.00
13	32.	Charitable Alcoholic Beverage License.....	\$55.00
14	33.	Winemaker Self-Distribution License.....	\$750.00
15	34.	Annual Public Event License.....	\$1,005.00
16	35.	One-Time Public Event License.....	\$255.00
17	36.	Small Brewer Self-Distribution License.....	\$750.00
18	37.	Brewpub License.....	\$1,005.00
19	38.	Brewpub Self-Distribution License.....	\$750.00

20 B. 1. There shall be added to the initial or renewal fees for
21 a Mixed Beverage License an administrative fee, which shall not be
22 deemed to be a license fee, in the amount of Five Hundred Dollars
23 (\$500.00), which shall be paid at the same time and in the same
24 manner as the license fees prescribed by paragraph 10 of subsection

1 A of this section; provided, this fee shall not be assessed against
2 service organizations or fraternal beneficiary societies which are
3 exempt under Section 501(c)(19), (8) or (10) of the Internal Revenue
4 Code.

5 2. There shall be added to the fee for a Mixed Beverage/Caterer
6 Combination License an administrative fee, which shall not be deemed
7 to be a license fee, in the amount of Two Hundred Fifty Dollars
8 (\$250.00), which shall be paid at the same time and in the same
9 manner as the license fee prescribed by paragraph 11 of subsection A
10 of this section.

11 C. Notwithstanding the provisions of subsection A of this
12 section:

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

18 2. The renewal fee for an airline/railroad beverage license
19 held by a railroad described in 49 U.S.C., Section 24301, shall be
20 One Hundred Dollars (\$100.00).

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

23 E. All licenses, except as otherwise provided, shall be valid
24 for one (1) year from date of issuance unless revoked or

1 surrendered. Provided, all employee licenses shall be valid for two
2 (2) years.

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

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

- 17 1. Nonresident Seller or Manufacturer License..... \$2,500.00
- 18 2. Wine and Spirits Wholesaler License..... \$2,500.00
- 19 3. Beer Distributor..... \$1,000.00
- 20 4. Retail Spirits License for cities and towns
21 over 5,000 population..... \$250.00
- 22 5. Retail Spirits License for cities and towns
23 from 2,501 to 5,000 population..... \$200.00

24

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

12 The surcharge shall be paid concurrent with the licensee's
 13 annual licensing fee and shall be deposited in the Alcoholic
 14 Beverage Governance Revolving Fund established pursuant to Section
 15 ~~131~~ 5-128 of this ~~act~~ title.

16 H. Any license issued by the ABLE Commission under this title
 17 may be relied upon by other licensees as a valid license, and no
 18 other licensee shall have any obligation to independently determine
 19 the validity of such license or be held liable solely as a
 20 consequence of another licensee's failure to maintain a valid
 21 license.

22 SECTION 11. AMENDATORY Section 19, Chapter 366, O.S.L.
 23 2016 (37A O.S. Supp. 2016, Section 2-107), is amended to read as
 24 follows:

1 Section 2-107. A. A wine and spirits wholesaler license shall
2 authorize the holder thereof:

3 1. To purchase and import into this state spirits and wines
4 from persons authorized to sell same who are the holders of a
5 manufacturer or nonresident seller license, and their agents who are
6 the holders of manufacturer's agent licenses;

7 2. To purchase spirits and wines from licensed distillers,
8 rectifiers and winemakers in this state;

9 3. To purchase spirits and wines from licensed wholesalers, to
10 the extent set forth in subsections B and C of this section;

11 4. To sell in retail containers in this state to retailers,
12 mixed beverage, caterer, special event, public event, hotel beverage
13 or airline/railroad beverage licensees, spirits and wines which have
14 been received and unloaded at the bonded warehouse facilities of the
15 wholesaler before such sale;

16 5. To sell to licensed wholesalers, to the extent set forth in
17 subsections B and C of this section, spirits and wines which have
18 been received and unloaded at the bonded warehouse facilities of the
19 wholesaler before such sale; and

20 6. To sell spirits and wines out of this state to qualified
21 persons.

22 Provided, however, sales of spirits and wine in containers with
23 a capacity of less than one-twentieth (1/20) gallon by a holder of a
24 wholesaler license shall be in full case lots and in the original

1 unbroken case. Wholesalers shall be authorized to place such signs
2 outside their place of business as are required by Acts of Congress
3 and by such laws and regulations promulgated under such Acts.

4 B. A wholesaler may sell spirits and wine to other wholesalers
5 or purchase spirits and wines from other wholesalers without
6 complying with subsection ~~B~~ A of this ~~subsection~~ section in the case
7 of the sale, purchase or other transfer or acquisition of the entire
8 business of a wholesaler, including the inventory of spirits and
9 wine.

10 C. A wholesaler license shall authorize the holder thereof to
11 ~~operate a single bonded warehouse with a single central office~~
12 ~~together with delivery facilities at a location in this state only:~~

13 1. Maintain self-owned or leased and self-operated bonded
14 warehouses within this state. All invoices shall be stored at the
15 principal place of business for which the wholesaler license was
16 granted; and

17 2. Accept as payment cash, personal check, cashier's check,
18 money order or electronic fund transfer from persons licensed to
19 purchase alcoholic beverages; provided, a wholesaler shall not be
20 permitted to accept payment by credit card.

21 SECTION 12. AMENDATORY Section 20, Chapter 366, O.S.L.
22 2016 (37A O.S. Supp. 2016, Section 2-108), is amended to read as
23 follows:
24

1 Section 2-108. A. A beer distributor license shall authorize
2 the holder thereof:

3 1. To purchase and import into this state beer from persons
4 authorized to sell the same who are the holders of manufacturer's
5 licenses, and their agents who are the holders of manufacturer's
6 agent licenses;

7 2. To purchase beer from licensed brewers and beer distributors
8 in this state;

9 3. To sell in retail containers to retailers, mixed beverage,
10 caterer, special event, public event, hotel beverage and
11 airline/railroad beverage licensees in this state, beer which has
12 been received, unloaded and stored at the holder's self-owned or
13 leased and self-operated ~~warehouse facilities~~ warehouses before such
14 sale, unless otherwise permitted by this section; and

15 4. To sell beer in this state to beer distributors and out of
16 this state to qualified persons, including federal instrumentalities
17 and voluntary associations of military personnel on federal enclaves
18 in this state over which this state has ceded jurisdiction.

19 B. In the event that no in-state beer distributor for a
20 particular brewer is willing to deliver beer to a county or counties
21 located within the state, the ABLE Commission may grant an economic
22 hardship exemption to an out-of-state beer distributor for a
23 particular brewer and waive the at-rest requirement set forth in
24 this section, upon a good-faith showing that:

1 1. It is economically infeasible or impractical for an in-state
2 beer distributor for a particular brewer to deliver to the county or
3 counties due to remoteness, or population, or both;

4 2. No in-state beer distributor of a particular manufacturer
5 objects to the waiver within thirty (30) days of receiving written
6 notice of the economic hardship application sent by the ABLE
7 Commission; and

8 3. The out-of-state beer distributor agrees to pay all
9 necessary licensing fees and remit all applicable taxes to the State
10 of Oklahoma.

11 C. The economic hardship exemption provided for in subsection B
12 of this section shall renew annually, provided that no in-state beer
13 distributor for a particular brewer submits an executed distribution
14 agreement to assume responsibility to distribute the beer in the
15 subject county or counties at least sixty (60) days prior to the
16 renewal date of the exemption. The in-state beer distributor who
17 has executed a distribution agreement to assume responsibility to
18 distribute beer in the subject territory shall compensate the out-
19 of-state distributor the fair market value of the distribution
20 rights of the territory as determined pursuant to Section ~~78~~ 3-108
21 of this ~~act~~ title.

22 D. Provided, nothing in this section shall require an Oklahoma
23 licensed beer distributor with an Oklahoma designated territory on
24 the effective date of this act to meet the hardship provisions in

1 subsections B and C of this section to continue to operate as a
2 licensed Oklahoma beer distributor.

3 SECTION 13. AMENDATORY Section 38, Chapter 366, O.S.L.
4 2016 (37A O.S. Supp. 2016, Section 2-126), is amended to read as
5 follows:

6 Section 2-126. A storage license may be issued to a holder of a
7 brewer, distiller, winemaker, rectifier, wine or spirits wholesaler,
8 beer distributor, nonresident seller, mixed beverage, caterer,
9 public event or hotel beverage license and shall authorize the
10 holder thereof to store alcoholic beverages in a public warehouse
11 holding a bonded warehouse license. The holder of a small brewer
12 license or brewpub license shall not be required to obtain a storage
13 license to store beer within the limits set forth in Section ~~3~~ 1-103
14 of this ~~act~~ title. No goods, wares or merchandise other than
15 alcoholic beverages may be stored in the same warehouse with
16 alcoholic beverages in private warehouses owned or leased and
17 operated by such licensees elsewhere than on their licensed
18 premises. Provided:

19 1. A storage license issued to a beer distributor shall permit
20 the storage of beer and permit the sale and delivery to retailers
21 from the premises covered by such license;

22 2. Any licensee who is the holder of a mixed beverage/caterer
23 combination license or the holder of a mixed beverage license and a
24 hotel beverage license who is issued a storage license shall store

1 all inventories of alcoholic beverages either on the premises of the
2 mixed beverage establishment or in the warehouse;

3 3. A storage license shall not be required for a special event
4 licensee storing alcoholic beverages for use at a subsequent event;
5 and

6 4. A storage license shall be required for a public event
7 licensee storing alcoholic beverages for use at a subsequent event,
8 and

9 ~~5. Notwithstanding the provisions of this section or any other
10 provision of this act, a licensee who wholly owns more than one
11 licensed mixed beverage establishment may store alcoholic beverages
12 for each of the licensed establishments in one location under one
13 storage license. Alcoholic beverages purchased and stored pursuant
14 to the provisions of a storage license for one licensed mixed
15 beverage establishment may be transferred by a licensee to another
16 licensed mixed beverage establishment which is wholly owned by the
17 same licensee. Notice of such a transfer shall be given in writing
18 to the Oklahoma Tax Commission and the ABLE Commission within three
19 (3) business days of the transfer. The notice shall clearly show
20 the quantity, brand and size of every transferred bottle or case.~~

21 SECTION 14. AMENDATORY Section 76, Chapter 366, O.S.L.
22 2016 (37A O.S. Supp. 2016, Section 3-106), is amended to read as
23 follows:
24

1 Section 3-106. A. A Direct Wine Shipper's Permit may be issued
2 by the Oklahoma ABLE Commission to a winery licensed in this or any
3 other state within the United States as a wine producer. A Direct
4 Wine Shipper's Permit allows a winery to ship up to six nine-liter
5 cases of wine annually directly to an Oklahoma resident who is
6 twenty-one (21) years of age or older for such resident's personal
7 use and not for resale. No resident shall be permitted to purchase
8 more than thirty nine-liter cases of wine per year under the
9 provisions of this section.

10 B. A Direct Wine Consumer's Permit may be issued by the ABLE
11 Commission to a resident who is twenty-one (21) years of age or
12 older and wishes to purchase wine directly from a winery pursuant to
13 this section.

14 C. The ABLE Commission shall promulgate rules governing the
15 application, issuance and renewal of Direct Wine Shipper's Permits,
16 which shall include but not be limited to:

17 1. Proof of current licensure in this or any other state as a
18 wine producer;

19 2. Payment of a registration fee of Three Hundred Dollars
20 (\$300.00) for original permits and One Hundred Fifty Dollars
21 (\$150.00) for renewal permits; and

22 3. Any other documentation that the ABLE Commission believes is
23 reasonably necessary to verify the identity and physical location of
24 the winery.

1 D. The ABLE Commission shall promulgate rules governing the
2 application, issuance and renewal of Direct Wine Consumer's Permits,
3 which shall include but not be limited to:

4 1. A sworn statement verifying that the applicant is at least
5 twenty-one (21) years of age upon the date of application submission
6 and that the wine is intended for personal use and not for resale;
7 and

8 2. Any other documentation that the ABLE Commission believes is
9 reasonably necessary to verify the identity or age of the applicant.

10 E. With regard to direct wine shipments permitted by this
11 section, Direct Wine Shipper permit holders:

12 1. Shall not ship more than six nine-liter cases of wine
13 annually to any person for his or her personal use;

14 2. Shall not ship wine intended for resale;

15 3. Shall ensure that all containers of wine shipped directly to
16 a resident in this state include the Direct Wine Consumer's Permit
17 Number issued by the ABLE Commission and are conspicuously labeled
18 with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR
19 OLDER REQUIRED FOR DELIVERY.";

20 4. Shall require the transporter or common carrier that
21 delivers the wine to obtain the signature of a person twenty-one
22 (21) years of age or older at the delivery address at the time of
23 delivery. At the expense of the Direct Wine Shipper, the Direct
24 Wine Shipper shall receive a delivery confirmation from the express

1 company, common carrier or contract carrier indicating the location
2 of delivery, time of delivery and the name and signature of the
3 individual who accepted the delivery. The ABLE Commission shall
4 design and create a label or approve a label that must be affixed to
5 the shipping container by the licensee;

6 5. Shall not ship ~~wine otherwise available in Oklahoma~~ directly
7 to any consumer any stock keeping unit (SKU) of wine that is at that
8 time being distributed by any Oklahoma wine and spirits wholesaler;

9 6. Shall report to the ABLE Commission annually, by a method
10 prescribed by the ABLE Commission, the total amount of wine shipped
11 into the state the preceding calendar year;

12 7. Shall annually pay to the Oklahoma Tax Commission all
13 applicable taxes due on sales authorized by this section to Oklahoma
14 residents in the preceding calendar year. The amount of such taxes
15 shall be calculated as if the sale were in Oklahoma at the location
16 where delivery is made. Upon request, permit holders shall permit
17 the Tax Commission to perform an audit of the permit holder's
18 records in order to assure compliance; and

19 8. Shall be deemed to have consented to the jurisdiction of any
20 agency or court of the State of Oklahoma tasked with the enforcement
21 of or adjudication of controversies related to this section and any
22 related laws or rules.

23 F. No express company, common carrier or contract carrier nor
24 any representative, agent or employee on behalf of the same shall

1 knowingly deliver any shipping container that contains an alcoholic
2 beverage into this state, unless it complies with the provisions of
3 this section. No express company, common carrier or contract
4 carrier nor any representative, agent or employee on behalf of the
5 same shall knowingly deliver any shipping container that is clearly
6 labeled as containing an alcoholic beverage, including but not
7 limited to the lawful shipment of wine under this section, to any
8 person in this state who is under the age of twenty-one (21) at the
9 time of delivery. Any express company, common carrier or contract
10 carrier that carries or transports alcoholic beverages for delivery
11 within this state in violation of this section shall be guilty of a
12 misdemeanor and for the first offense be fined not more than Two
13 Thousand Five Hundred Dollars (\$2,500.00), for a second offense
14 shall be fined not more than Five Thousand Dollars (\$5,000.00) and
15 for a third and subsequent offense be fined not more than Ten
16 Thousand Dollars (\$10,000.00). An express company, common carrier
17 and contract carrier shall be held vicariously liable for the
18 actions of its representatives, agents and employees for actions in
19 violation of this section.

20 SECTION 15. AMENDATORY Section 78, Chapter 366, O.S.L.
21 2016 (37A O.S. Supp. 2016, Section 3-108), is amended to read as
22 follows:
23
24

1 Section 3-108. A. The provisions of this section shall be in
2 effect except as otherwise provided in Article XXVIII A of the
3 Oklahoma Constitution.

4 B. Subject to the provisions of subsection D of this section,
5 every licensed brewer or cider manufacturer authorized to sell its
6 beer or cider in this state shall:

7 1. Enter into a distributor agreement with a licensed
8 distributor, as defined herein, to sell the designated brands,
9 including brand extensions, of the brewer or cider manufacturer.
10 The agreement shall designate the sales territory of that licensed
11 distributor and the designated brands to be sold by the licensed
12 distributor. All such distributor agreements shall specifically
13 authorize this sale of the designated brands by a licensed
14 distributor within that sales territory. All such distributor
15 agreements shall further provide that the licensed manufacturer who
16 desires to sell a brand extension of a low-point beer in Oklahoma
17 must assign the low-point beer brand extension to the licensed
18 distributor to whom the licensed manufacturer granted the exclusive
19 sales territory to the low-point beer brand from which the brand
20 extension resulted;

21 2. Sell its registered and approved designated brands only to a
22 licensed distributor with whom that brewer or cider manufacturer has
23 a distributor agreement designating the sales territory of the
24

1 licensed distributor and the designated brands to be sold by the
2 licensed distributor;

3 3. Authorize only one licensed distributor for each designated
4 sales territory. Such licensed distributor shall be the only
5 licensed distributor for the designated brands of the authorizing
6 brewer or cider manufacturer within that designated sales territory;
7 and

8 4. Designate who is responsible for the distribution of its
9 designated brands.

10 C. Subject to the provisions of subsection D of this section,
11 any and all licensed distributors possessing the rights to
12 distribute a low-point beer brand in a specific territory prior to
13 the introduction of that low-point beer's correlating beer brand
14 extension in that specific territory shall retain the right to
15 distribute the low-point beer from which the brand extension
16 resulted.

17 D. 1. No later than ~~sixty (60) days after the effective date~~
18 ~~of this act~~ August 2, 2018, a brewer shall assign the exclusive
19 right to distribute a beer brand, including brand extensions
20 thereof, to the low-point beer distributor who was, prior to the
21 effective date of this act, assigned the exclusive distribution
22 rights to the low-point beer from which the brand extension arose
23 without charge or payment of compensation, unless the low-point beer
24 distributor is, on the effective date of this act, a brewer of beer

1 or low-point beer and has therefore been distributing low-point beer
2 pursuant to a license to so distribute, subject to the provisions of
3 subsection E of this section. This subsection shall not apply to a
4 small brewer as defined in Section ~~3~~ 1-103 of this ~~act~~ title.

5 2. With respect to brand extensions which arise after ~~the~~
6 ~~effective date of this act~~ October 1, 2018, the brewer or cider
7 manufacturer shall assign the exclusive right to distribute the
8 brand extension to the distributor who has been assigned the
9 exclusive distribution rights to the beer or cider from which the
10 brand extension arose, without charge or payment of compensation.

11 3. With respect to a brand of beer or cider which was, prior to
12 April 15, 2017, distributed in this state only as strong beer or
13 cider pursuant to the Alcoholic Beverage Control Act then in effect,
14 if a low-point version of the brand is introduced after April 15,
15 2017, no later than August 2, 2018, the brewer or cider manufacturer
16 shall assign the exclusive rights to distribute the low-point
17 version of the brand to the distributor who was, immediately prior
18 to the introduction of the low-point version of the brand, assigned
19 the exclusive distribution rights to the strong version of the brand
20 without charge or payment of compensation.

21 4. No later than ~~sixty (60) days after the effective date of~~
22 ~~this act~~ August 2, 2018, with respect to dual strength beer, the
23 brewer thereof shall assign the exclusive right to distribute the
24 brands represented by the dual strength beer to either the low-point

1 beer distributor or the nonresident seller who had theretofore been
2 assigned the exclusive distribution rights in the territory to
3 either version of the dual strength beer; provided, however,
4 whichever party is selected by the brewer must compensate the party
5 that was not selected by the brewer for the loss of the distribution
6 rights with respect to that particular territory. Whichever party
7 is selected shall obtain the requisite distributor license and shall
8 be subject to the provisions of this act.

9 ~~4.~~ 5. Compensation for the purposes of this provision shall be
10 the fair market value of the party losing its distribution rights
11 with respect to the beer within that specific territory. Fair
12 market value shall be determined as set forth in Section ~~81~~ 3-111 of
13 this ~~act~~ title and shall take into account all aspects of brand
14 valuation, including but not limited to:

- 15 a. the diminished value of the distribution of one
16 version of beer as a consequence of the subsequent
17 introduction of the other version,
- 18 b. the expected annual sales and earnings of the
19 distributor agreement,
- 20 c. the length of time the existing distributor held in
21 the distribution sales agreement, and
- 22 d. any other relevant items of value, such as goodwill
23 and going concern.

24

1 E. If a brewer, whether directly or through an affiliate,
2 maintained one or more licenses to distribute low-point beer in this
3 state prior to the effective date of this act, then up to two ~~(2)~~ of
4 the brewer's low-point beer distribution licenses shall
5 automatically convert to beer distribution licenses upon the
6 effective date of this act, and such brewer shall be permitted to
7 continue to distribute beer in two ~~(2)~~ territories within which it
8 currently distributes without the appointment of a distributor for
9 such period of time as determined by the Legislature and consistent
10 with the Constitution of the State of Oklahoma; provided however, it
11 shall not be permitted to distribute beer outside of the territory
12 unless it enters into a distributor agreement with an independent
13 licensed distributor as provided in paragraph 1 of subsection B of
14 this section. This section shall not apply to small brewers that
15 have elected to self-distribute.

16 SECTION 16. AMENDATORY Section 80, Chapter 366, O.S.L.
17 2016 (37A O.S. Supp. 2016, Section 3-110), is amended to read as
18 follows:

19 Section 3-110. A. A licensed distributor designated as the
20 licensed distributor for a beer brand within a designated sales
21 territory shall present that beer brand for sale to all on-premise
22 licensees on the same price basis and without discrimination and to
23 all off-premise licensees on the same price basis within a
24 particular county and without discrimination. A licensed

1 distributor shall not sell, supply or deliver, either directly or
2 indirectly through a third party, a beer brand to a licensed
3 retailer outside of the designated sales territory of the designated
4 distributor nor to any person the licensed distributor has reason to
5 believe will sell or supply any quantity of the beer brand to any
6 retail location outside of the designated sales territory of the
7 designated distributor.

8 B. All beer shall only be transported by a marked conveyance
9 owned or leased by the licensed distributor and operated by the
10 licensed distributor or an employee of the distributor for the
11 products of a licensed manufacturer within the designated sales
12 territory to the address and location of a licensed retailer within
13 that designated sales territory.

14 C. Any beer sold by the licensed distributor shall not be
15 delivered to, received by or stored at any place other than the
16 address and location of the licensed retailer for which state and
17 local retailer licenses or permits have been issued.

18 D. With the approval of the licensed manufacturer, a licensed
19 distributor may sell the designated brands to a licensed retailer
20 located in a designated sales territory of another licensed
21 distributor if that licensed distributor is temporarily unable for
22 any reason to provide the designated brands of the licensed
23 manufacturer within its designated sales territory.

24

1 E. All beer purchased by a licensed distributor for resale in
2 this state shall physically come into the possession of the licensed
3 distributor and be unloaded in and distributed from the licensed
4 ~~warehouse~~ warehouses of the licensed distributor located in this
5 state prior to being resold in this state.

6 SECTION 17. AMENDATORY Section 81, Chapter 366, O.S.L.
7 2016 (37A O.S. Supp. 2016, Section 3-111), is amended to read as
8 follows:

9 Section 3-111. A. Except as provided in subsection F of this
10 section, a small brewer is not subject to the termination provisions
11 of this section.

12 B. 1. Except as provided in subsections C, D and E of this
13 section, no brewer shall terminate a distributor agreement with any
14 beer distributor unless all of the following occur:

- 15 a. the brewer establishes good cause for such
16 termination,
- 17 b. the beer distributor receives written notification by
18 certified mail, return receipt requested, from the
19 brewer of the alleged noncompliance and is afforded no
20 less than sixty (60) days in which to cure such
21 noncompliance. If not capable of being cured within
22 the sixty-day period, the beer distributor shall begin
23 the cure within the sixty-day period and diligently
24 pursue the cure as promptly as feasible,

- 1 c. the beer distributor fails to cure such noncompliance
2 within the allotted cure period, and
- 3 d. the brewer provides written notice by certified mail,
4 return receipt requested, to the beer distributor of
5 such continued noncompliance. The notification shall
6 contain a statement of the intention of the brewer to
7 terminate the distributor agreement, the reasons for
8 the termination and the date the termination shall
9 take effect.

10 2. If a beer distributor cures an alleged noncompliance within
11 the cure period provided in subparagraph b of paragraph 1 of this
12 subsection, any notice of termination from a brewer to a beer
13 distributor shall be null and void.

14 C. A brewer may immediately terminate a distributor agreement,
15 effective upon furnishing written notification to the beer
16 distributor by certified mail, return receipt requested, for any of
17 the following reasons:

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

21 2. The assignment or attempted assignment by the beer
22 distributor for the benefit of creditors, the institution of
23 proceedings in bankruptcy by or against the beer distributor, the
24

1 dissolution or liquidation of the beer distributor or the insolvency
2 of the beer distributor;

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

7 4. The beer distributor has been convicted of a felony that, in
8 the brewer's sole judgment, adversely affects the goodwill of the
9 beer distributor or brewer;

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 of ownership of the beer distributor,
16 stock of the beer distributor or stock of any parent corporation of
17 the beer distributor, or any change in the beneficial ownership or
18 control of any entity having control of the beer distributor,
19 without obtaining the prior written approval of the brewer, which
20 may not be unreasonably withheld, except as may otherwise be
21 permitted pursuant to a written agreement between the parties;

22 7. Fraudulent conduct in the beer distributor's dealings with
23 the brewer of beer, including the intentional sale of beer outside
24 the brewer's established quality standards;

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

7 9. Any sale of beer, directly or indirectly, to customers
8 located outside the territory assigned to the beer distributor by
9 the brewer unless expressly authorized by the brewer.

10 Provided, the beer distributor shall have the opportunity to
11 sell the brewer's brands for one hundred twenty (120) days after
12 termination in accordance with the distributor agreement.

13 D. The brewer shall have the right to terminate an agreement
14 with a beer distributor at any time by giving the beer distributor
15 at least ninety-days' written notice by certified mail, return
16 receipt requested; provided, the brewer shall give a similar notice
17 to all other beer distributors in all other states who have entered
18 into the same distributor agreement with the brewer.

19 E. If a particular brand of beer is transferred by purchase or
20 otherwise from a brewer to a successor brewer, the following shall
21 occur:

22 1. The successor brewer shall become obligated to all of the
23 terms and conditions of the agreement in effect on the date of
24 succession. This subsection applies regardless of the character or

1 form of the succession. A successor brewer has the right to
2 contractually require its beer distributor to comply with
3 operational standards of performance, if the standards are uniformly
4 established for all of the successor brewer's distributors. A
5 successor brewer may, upon written notice, terminate its agreement,
6 in whole or in part, with a beer distributor of the brewer it
7 succeeded, for the purpose of transferring the distribution rights
8 in the beer distributor's territory to a new beer distributor,
9 provided that the successor beer distributor first pays to the
10 existing beer distributor the fair market value of the existing
11 distributor's business with respect to the terminated brand or
12 brands;

13 2. If the successor brewer decides to terminate its agreement
14 with the existing beer distributor for purposes of transfer, the
15 successor brewer shall notify the existing beer distributor in
16 writing of the successor brewer's intent not to appoint the existing
17 beer distributor for all or part of the existing beer distributor's
18 territory. The successor brewer shall mail the notice of
19 termination by certified mail, return receipt requested, to the
20 existing beer distributor. The successor brewer shall include in
21 the notice the names, addresses and telephone numbers of the
22 successor beer distributor or distributors;

23 3. a. the successor beer distributor shall negotiate with
24 the existing beer distributor to determine the fair

1 market value of the existing beer distributor's right
2 to distribute in the existing beer distributor's
3 territory. The successor beer distributor and the
4 existing beer distributor shall negotiate the fair
5 market value in good faith, and

6 b. the existing beer distributor shall continue to
7 distribute in good faith until payment of the
8 compensation agreed to under subparagraph a of this
9 paragraph, or awarded under paragraph 4 of this
10 subsection, is received; and

11 4. a. if the successor beer distributor and the existing
12 beer distributor fail to reach a written agreement on
13 the fair market value within thirty (30) days after
14 the existing beer distributor receives the notice
15 required pursuant to paragraph 2 of this subsection,
16 the successor beer distributor or the existing beer
17 distributor shall send a written notice to the other
18 party requesting arbitration pursuant to the Uniform
19 Arbitration Act, Part 2 of Article 22 of Title 13,
20 C.R.S. Arbitration shall be held for the purpose of
21 determining the fair market value of the existing beer
22 distributor's right to distribute in the existing beer
23 distributor territory,

24

- 1 b. notice of intent to arbitrate shall be sent, as
2 provided in subparagraph a of this paragraph, not
3 later than forty (40) days after the existing beer
4 distributor receives the notice required pursuant to
5 paragraph 2 of this subsection. The arbitration
6 proceeding shall conclude not later than sixty (60)
7 days after the date the notice of intent to arbitrate
8 is mailed to a party, unless this time is extended by
9 mutual agreement of the parties and the arbitrator,
- 10 c. any arbitration held pursuant to this subsection shall
11 be conducted in a city within this state that:
12 (1) is closest to the existing beer distributor, and
13 (2) has a population of more than twenty thousand
14 (20,000) people,
- 15 d. any arbitration held pursuant to this paragraph shall
16 be conducted before one impartial arbitrator to be
17 selected by the American Arbitration Association or
18 its successor. The arbitration shall be conducted in
19 accordance with the rules and procedures of the
20 Uniform Arbitration Act, Part 2 of Article 22 of Title
21 13, C.R.S.,
- 22 e. an arbitrator's award in any arbitration held pursuant
23 to this paragraph shall be monetary only and shall not
24 enjoin or compel conduct. Any arbitration held

1 pursuant to this paragraph shall be in lieu of all
2 other remedies and procedures,

3 f. the cost of the arbitrator and any other direct costs
4 of an arbitration held pursuant to this paragraph
5 shall be equally divided by the parties engaged in the
6 arbitration. All other costs shall be paid by the
7 party incurring them,

8 g. the arbitrator in any arbitration held pursuant to
9 this paragraph shall render a written decision not
10 later than thirty (30) days after the conclusion of
11 the arbitration, unless this time is extended by
12 mutual agreement of the parties and the arbitrator.
13 The decision of the arbitrator is final and binding on
14 the parties. The arbitrator's award may be enforced
15 by commencing a civil action in any court of competent
16 jurisdiction. Under no circumstances may the parties
17 appeal the decision of the arbitrator,

18 h. an existing beer distributor or successor beer
19 distributor who fails to participate in the
20 arbitration hearings in any arbitration held pursuant
21 to this paragraph waives all rights the existing beer
22 distributor or successor beer distributor would have
23 had in the arbitration and is considered to have
24 consented to the determination of the arbitrator, and

1 i. if the existing beer distributor does not receive
2 payment from the successor beer distributor of the
3 settlement or arbitration award required under
4 paragraph 2 or 3 of this subsection within thirty (30)
5 days after the date of the settlement or arbitration
6 award:

7 (1) the existing beer distributor shall remain the
8 beer distributor in the existing beer
9 distributor's territory to at least the same
10 extent that the existing beer distributor
11 distributed the beer immediately before the
12 successor brewer acquired rights to the brand,
13 and

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

16 F. 1. In addition to termination rights that may be set forth
17 in a distributor agreement, a small brewer who manufactures less
18 than twenty-five thousand (25,000) barrels of beer annually may
19 terminate a distributor agreement with any beer distributor provided
20 that, prior to the effective date of the termination, the small
21 brewer pays the beer distributor the fair market value of the
22 distribution rights which will be lost or diminished by reason of
23 the termination.

1 2. If such small brewer and beer distributor cannot mutually
2 agree to the fair market value of the applicable distribution rights
3 lost or diminished by reason of the termination, then the brewer
4 shall pay the beer distributor a good faith estimate of the fair
5 market value of the applicable distribution rights.

6 3. If the beer distributor being terminated under ~~subparagraph~~
7 paragraph 2 of this subsection disputes that the payment made by the
8 small brewer was less than the fair market value of the distribution
9 rights, then the beer distributor may within forty-five (45) days of
10 termination submit the question of fair market value of the
11 applicable distribution rights lost or diminished by reason of the
12 termination to binding arbitration before a panel of three neutral
13 arbitrators appointed in accordance with the commercial arbitration
14 rules of the American Arbitration Association, which panel shall
15 determine by majority decision whether the small brewer's payment
16 meets the requirements of ~~subparagraph~~ paragraph 2 of this
17 subsection.

18 4. If the arbitration panel rules that the payment made by the
19 small brewer to the beer distributor upon termination was less than
20 the fair market value of distribution rights lost or diminished by
21 reason of the termination, then the small brewer must pay the beer
22 distributor the difference between the payment made to the beer
23 distributor and the determined fair market value plus interest.

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

7 6. All arbitration fees and expenses shall be equally divided
8 among the parties to the arbitration, except if the arbitration
9 panel determines that the small brewer's payment upon termination
10 was not a good-faith estimate of the fair market value, then the
11 panel may award up to one hundred percent (100%) of the arbitration
12 costs to the small brewer.

13 G. 1. Any beer distributor or brewer who is aggrieved by a
14 violation of any provision of subsections B and D of this section
15 shall be entitled to recovery of damages caused by the violation.
16 Except for a dispute arising under subsection E of this section,
17 damages shall be sought in a civil action in any court of competent
18 jurisdiction.

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

22 H. Nothing in this section shall be construed to limit or
23 prohibit good-faith settlements voluntarily entered into by the
24 parties.

1 I. Nothing in this section shall be construed to give a beer
2 distributor any right to compensation if an agreement with the beer
3 distributor is terminated by a brewer pursuant to subsections B, C
4 and D of this section.

5 J. No brewer shall require any beer distributor to waive
6 compliance with any provision of the Oklahoma Alcoholic Beverage
7 Control Act.

8 K. No brewer shall charge or accept, and no beer distributor
9 shall pay or provide, any money, property, gratuity, rebate, free
10 goods, shipping charges different than those charged for all beer
11 distributors, allowances, thing of value or inducement from a beer
12 distributor in exchange for the brewer entering into a distributor
13 agreement with the beer distributor. However, a brewer who also
14 holds a beer distributor license and desires to sell all or a
15 portion of its beer distribution rights and business, or a holder of
16 small brewer license who desires to change its election from self-
17 distribution to the use of a distributor agreement may accept a
18 payment for the fair market value of its existing and established
19 distribution business in the subject territory.

20 L. This section shall apply to any agreement entered into and
21 any renewals, extensions, amendments or conduct constituting a
22 modification of a distributor agreement by a brewer or cider
23 manufacturer existing on or after the effective date of this act.

24

1 M. Where a cider manufacturer distributes cider through a beer
2 distributor, the rights and obligations of the cider manufacturer,
3 the distributor, a successor cider manufacturer and a successor
4 distributor shall be the same as the rights and obligations provided
5 in this section for a brewer, beer distributor, successor brewer and
6 successor beer distributor.

7 SECTION 18. AMENDATORY Section 86, Chapter 366, O.S.L.
8 2016 (37A O.S. Supp. 2016, Section 3-116), is amended to read as
9 follows:

10 Section 3-116. A. Any manufacturer or subsidiary of a
11 manufacturer who markets its products solely through a subsidiary or
12 subsidiaries, a distiller, rectifier, bottler, winemaker or importer
13 of alcoholic beverages, bottled or made in a foreign country, either
14 within or without this state, may sell such brands or kinds of
15 alcoholic beverages to every licensed wine and spirits wholesaler
16 who desires to purchase the same, on the same price basis and
17 without discrimination or inducements, and shall further be required
18 to sell such beverages only to those persons licensed as wine and
19 spirits wholesalers.

20 B. The provisions of subsection A of this section shall not
21 apply to a brewer.

22 C. No manufacturer shall require a wine and spirits wholesaler
23 or beer distributor to purchase any alcoholic beverages or any
24 goods, wares or merchandise as a condition to the wine and spirits

1 wholesaler or beer distributor obtaining or being entitled to
2 purchase any alcoholic beverages.

3 Violation of this section shall be a misdemeanor. Conviction
4 hereunder shall automatically revoke the violator's license.

5 D. In the event a manufacturer or nonresident seller has not
6 designated a wine and spirits wholesaler to sell its product in the
7 state, the product shall be posted in accordance with the following:

8 1. On the first business day of each month, the manufacturer
9 shall post with the ABLE Commission the price of all wine and
10 spirits it proposes to offer for sale to licensed wine and spirit
11 wholesalers in this state. All prices shall become effective on the
12 first business day of the following month and shall remain in effect
13 and unchanged for a period of not less than one (1) month. The
14 posting shall be submitted on a form approved by the ABLE Commission
15 and shall identify the brand, size, alcohol content and price of
16 each item intended to be offered for sale. No change or
17 modification of the posted price shall be permitted except upon
18 written permission from the ABLE Commission based on good cause
19 shown;

20 2. When a new item is registered, or an old item is
21 discontinued, or any change is made by a manufacturer or nonresident
22 seller as to price, age, proof, label or type of bottle of any item
23 offered for sale in this state, such new item, discontinued item or
24 change in price, age, proof, label or type of bottle of any item

1 shall be listed separately on the cover page of the price schedule
2 and, in the case of prices changed, shall reflect both the old and
3 the new price of the item changed. All new items and changes as to
4 age, proof, label or type of bottle in which any item is offered for
5 sale shall first be submitted in writing to the ABLE Commission for
6 approval under such requirements as it may deem proper. Approval or
7 disapproval of price changes shall not be required if filed in
8 conformity with the provisions of this subsection.

9 a. In addition to the foregoing requirements, the
10 manufacturer shall, at the same time, on regular forms
11 provided by the ABLE Commission, re-register all items
12 of alcoholic beverage which the manufacturer had
13 registered and offered for sale in this state during
14 the previous price period.

15 b. A short form of price posting may be permitted by the
16 ABLE Commission for any price period in which no new
17 item is offered or old item discontinued, or change is
18 made in the price, age, proof, label or type of bottle
19 of any item offered by any manufacturer. Such short
20 form shall contain only such statements as the
21 Director may require or permit;

22 3. The brand name, size, proof and type of alcoholic beverages
23 must be shown on each container sold in this state;
24

1 4. No brand of alcoholic beverage shall be listed on a price
2 list or posting in more than one place, or offered for sale by more
3 than one method, or at more than one price, except as provided
4 hereafter:

5 a. a manufacturer who has posted F.O.B. prices from a
6 foreign shipping point shall also list the same
7 item(s) at an F.O.B. point within the continental
8 United States. Only one United States F.O.B. point
9 shall be permitted, and

10 b. a manufacturer may list on their price list or posting
11 an item of specific size that may be packaged in more
12 than one type or design container, provided that the
13 containers being offered have been approved by the
14 ABLE Commission;

15 5. The manufacturer shall sell to the wine and spirits
16 wholesalers all items of wine and spirits at the current posted
17 price in effect on the date of the shipment as shown on the
18 manifest, bill of lading or invoice;

19 6. A full and correct copy of each said price registration
20 shall be transmitted to wine and spirits wholesalers on the same day
21 such prices are filed with or mailed to the ABLE Commission. Proof
22 of such mailing or delivery shall be furnished the ABLE Commission
23 by the manufacturer with the price registration or upon request;
24

1 7. The sale, or offer to sell, of any item of alcoholic
2 beverage by a manufacturer to a wine and spirits wholesaler at a
3 price not in compliance with the price posted with the ABLE
4 Commission may be deemed a violation; and

5 8. This subsection shall not apply to a manufacturer that has
6 designated a wine and spirits wholesaler to sell its product in the
7 state.

8 SECTION 19. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 3-116.1 of Title 37A, unless
10 there is created a duplication in numbering, reads as follows:

11 A. In the event a manufacturer has not designated a wine and
12 spirits wholesaler to sell its product in the state, every wine and
13 spirits wholesaler that sells that product shall comply with the
14 following posting requirements:

15 1. All wine and spirits wholesalers who choose to sell the
16 nondesignated product shall file with the ABLE Commission on the
17 fifteenth day of each posting month a proposed category percentage
18 markup. A percentage markup shall be defined as a percentage of
19 increase or decrease in relation to the wholesaler laid-in-cost for
20 all items in each category. The percentage does not have to be the
21 same for all categories, but in the original posting the percentage
22 shall be the same for all items in the same category;

23 2. The proposed markups shall be computed by percentage in the
24 four categories: Spirits, Cordials and Specialties, Wines-Domestic

1 and Wines-Imported. In reporting to the ABLE Commission, the
2 proposed markups shall be set forth in the following categories and
3 order:

- 4 a. Category 1 - Spirits: Straights, Blends, Bonds, Corn,
5 Rye, Scotch, Canadian, Irish, Vodka, Gin, Rum, Brandy
6 Alcohol and Tequila,
- 7 b. Category 2 - Cordials and Specialties: Cocktails,
8 Cordials, Domestic and Imported and Miscellaneous
9 Specialties,
- 10 c. Category 3 - Wines-Domestic: Vermouth American,
11 Fortified American, Light American and Champagne
12 American, and
- 13 d. Category 4 - Wines-Imported: Vermouth Imported,
14 Fortified Imported, Light French, Light German, Light
15 Other Imported and Champagne Imported;

16 3. When a wine and spirits wholesaler desires to charge for
17 expenses incurred in handling of individual bottles in fractional
18 cases, or for transportation of their alcoholic beverage to persons
19 licensed to purchase the same, the wine and spirits wholesaler shall
20 on the fifteenth day of each posting month include with its proposed
21 percentage posting the separate amounts, if any, to be charged for
22 bottle handling and the amount of transportation, respectively, to
23 be charged per case;

24

1 4. The proposed posting by the wine and spirits wholesaler
2 shall list the percentage posting, and the handling and
3 transportation cost without discrimination to all licensees
4 regardless of their distance from the wine and spirits wholesaler's
5 warehouse;

6 5. The ABLE Commission shall immediately upon receipt of all
7 proposed category percentage postings, prepare a summation of the
8 proposal and disseminate an electronic copy to all wine and spirits
9 wholesalers. The summation shall contain the proposed percentage
10 posting for each category, including proposed transportation charges
11 as submitted by each wine and spirits wholesaler;

12 6. After filing the report required by this subsection, any and
13 all wine and spirits wholesalers shall be permitted to register on
14 or before the twenty-fifth day of each posting month an adjusted
15 price. The adjusted price means percentage or individual item
16 prices reported and registered by a wine and spirits wholesaler on
17 or before the twenty-fifth day of the posting month in response to a
18 lower percentage reported and registered by a competitor on the
19 fifteenth day of the month. The adjusted price shall be no lower
20 than the lowest percentage posted on the fifteenth day of said month
21 by any wine and spirits wholesaler;

22 7. The adjusted price posted by a wine and spirits wholesaler
23 in response to the lowest percentage posted by any wine and spirits
24 wholesaler may, but need not be, posted in terms of a percentage

1 and, if not so stated, shall state the price at which the wine and
2 spirits wholesaler proposes to sell each individual item or size of
3 item which he proposes to offer for sale during the posting period.
4 The price postings, except for unmodified percentage markups, shall
5 describe each item by brand, size, age, type and proof. Wines and
6 champagnes shall reflect the alcoholic contents thereof;

7 8. The percentage markup utilized by a wine and spirits
8 wholesaler in calculating its adjusted prices may be at any level
9 between its originally posted percentage markup and the lowest
10 percentage markup originally posted by any other wine and spirits
11 wholesaler, but may not be above its original posting or below the
12 lowest percentage posted by any wine and spirits wholesaler. Any
13 fraction within four (4) decimals in determining final prices of
14 bottles shall be raised to the next higher cent;

15 9. Each wine and spirits wholesaler may, upon the twenty-fifth
16 day of the posting month, adjust his transportation and handling
17 charges to a level no lower than that of a competitor or higher than
18 its initial proposal on the fifteenth day of the posting month.
19 Such bottle handling and transportation charge shall be in effect
20 for the duration of the price posting which it accompanies.
21 Provided, that if a licensee shall order any item in full case lots
22 and the wine and spirits wholesaler does not have in inventory such
23 item in full case lots, no bottle handling charge may be assessed to
24 the licensee for the partial case;

1 10. All wine and spirits wholesalers shall, on the same date of
2 filing an adjusted price posting with the ABLE Commission, transmit
3 electronically a copy of its adjusted prices to each wine and
4 spirits wholesaler in the state;

5 11. A wine and spirits wholesaler may include a minimum order
6 charge of no less than One Dollar (\$1.00) for any order of alcoholic
7 beverages to a retail, mixed beverage, caterer or special event
8 licensee that does not exceed the amount that such wholesaler
9 designates as a minimum order in his proposed price posting. The
10 minimum charge, if it is more than One Dollar (\$1.00), and the
11 amount of the minimum order shall be included in the price posting;

12 12. All price postings, as adjusted, shall become effective on
13 the first day of the following month and remain in effect for a
14 period of two (2) months. No other charge may be assessed by the
15 wholesaler to the licensee except those expressly authorized by the
16 provisions of the Oklahoma Alcoholic Beverage Control Act or the
17 rules of the ABLE Commission;

18 13. A price posting on a new item not previously stocked by a
19 wine and spirits wholesaler shall be filed with the ABLE Commission
20 prior to offering for sale, but no such item shall be listed at a
21 lower price than is then, or will be, in effect during the price
22 period for which the new item is filed, and within the percentage in
23 the proper category of said wine and spirits wholesaler. In the
24 event of a new item posting, mailings to wine and spirits

1 wholesalers and those licensed to purchase wine and spirits in the
2 state, as herein required, shall be sent on the same date as the
3 postings;

4 14. When a wine and spirits wholesaler discontinues an item, or
5 does not have an item in its warehouse or on order, the item shall
6 be deleted from its price posting. When or if the item is restocked
7 or replaced in the inventory of the wine and spirits wholesaler, it
8 shall be reentered into the price postings as would a new item;

9 15. The sale of or the offer to sell alcoholic beverages at the
10 prices quoted in such price posting before the same is in force and
11 effect shall be grounds for the suspension or revocation of the wine
12 and spirits wholesaler's license if the new price varies from the
13 price then in effect; and

14 16. The provisions of this section are severable, and if any
15 provisions of the same shall be void, the decision of the court so
16 holding shall not affect or impair the remaining parts or provisions
17 thereof.

18 B. This section shall not apply to products that have been
19 designated by a manufacturer for distribution by a wine and spirits
20 wholesaler in the state.

21 SECTION 20. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 3-116.2 of Title 37A, unless
23 there is created a duplication in numbering, reads as follows:

24

1 A. In the event a manufacturer has designated a wine and
2 spirits wholesaler to sell its product in the state, the wine and
3 spirits wholesaler shall comply with the following posting
4 requirements: The wine and spirits wholesaler shall submit its
5 line-item price posting for that product no later than the fifteenth
6 day of each month. If the fifteenth day of the month falls on a
7 Saturday, Sunday or a holiday then the wine and spirits wholesaler
8 shall submit its price posting on the next business day. The price
9 posting submitted by the wine and spirits wholesaler shall list the
10 line-item price, handling cost, transportation cost and any other
11 costs that may be associated with the sale or delivery of that item.
12 All prices shall become effective on the first business day of the
13 month following posting and shall remain in effect and unchanged in
14 one-month increments. No change or modification of the posted price
15 shall be permitted except upon written permission from the ABLE
16 Commission based on good cause shown.

17 B. This section shall not apply unless a product has been
18 designated by a manufacturer for distribution by a single wine and
19 spirits wholesaler in the state.

20 SECTION 21. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 3-116.3 of Title 37A, unless
22 there is created a duplication in numbering, reads as follows:

23 A. On the first business day of every month, every wine and
24 spirits wholesaler shall electronically publish and distribute its

1 price catalog to the ABLE Commission, to all licensees who have
2 purchased alcoholic beverages from the wine and spirits wholesaler
3 within the past sixty (60) days, and to any on-premises or off-
4 premises licensee who requests an electronic copy of the same.
5 Every price catalog shall contain the sales price of every item
6 offered for sale by brand name, size, proof and type of alcoholic
7 beverage, as well as any transportation, handling and other charges
8 to be assessed for the delivery of the products. In addition, every
9 price catalog shall contain the effective date of the price catalog,
10 as well as the name, physical address, office phone number and
11 facsimile number of the wine and spirits wholesaler.

12 B. The wine and spirits wholesaler shall not alter or modify
13 its price catalog without the prior written consent of the ABLE
14 Commission for good cause shown. The ABLE Commission may also
15 approve a modification to a wine and spirits wholesaler's price
16 catalog in the event a manufacturer is allowed to change the price
17 of a product within the posting period. For designated products,
18 the price amendment shall become effective on the first business day
19 of the following calendar week. For nondesignated products, the
20 price amendment shall become effective on the first day of the
21 second month of the sixty-day posting period. The wine and spirits
22 wholesaler shall publish and distribute all approved price
23 amendments consistent with the requirements set forth in subsection
24 A of this section.

1 SECTION 22. AMENDATORY Section 101, Chapter 366, O.S.L.
2 2016 (37A O.S. Supp. 2016, Section 4-104), is amended to read as
3 follows:

4 Section 4-104. Municipalities are hereby authorized to levy an
5 annual occupational tax for the privilege of operating as a
6 retailer, mixed beverage, beer and wine, caterer, public event or
7 special event licensee, bottle club, manufacturer, wine and spirits
8 wholesaler or beer distributor, within their respective
9 jurisdictions, not to exceed the state license fee for such
10 licensees; provided, the tax shall be levied only by the
11 municipality in which such licensee has its principal place of
12 business. This section shall not give any municipality any right to
13 determine or regulate the issuance of any license, except as
14 specifically provided for in this section, as the ABLE Commission
15 shall have exclusive authority as to issuance and regulations of
16 licenses. No municipality may prescribe rules or regulations in
17 conflict with or in addition to the statutes of this state or the
18 rules of the ABLE Commission. No licensee shall be held liable for
19 engaging in business otherwise authorized under this title with any
20 other retailer, mixed beverage, beer and wine, caterer, public event
21 or special event licensee, bottle club, manufacturer, wine and
22 spirits wholesaler or beer distributor solely because such other
23 party has failed to pay any occupational tax due under this section.
24

1 Municipalities which levy an occupational tax under this section
2 shall make an annual report to the ABLE Commission, covering the
3 fiscal year, showing the number and class of licensees subject to
4 the tax authorized by this section, and the amount of money received
5 therefrom, which information is to be included in the annual report
6 of the ABLE Commission submitted to the Governor, and transmitted to
7 the Legislature.

8 SECTION 23. AMENDATORY Section 102, Chapter 366, O.S.L.
9 2016 (37A O.S. Supp. 2016, Section 4-105), is amended to read as
10 follows:

11 Section 4-105. Counties are hereby authorized to levy an annual
12 occupational tax for the privilege of operating as a mixed beverage,
13 beer and wine, caterer, public event or special event licensee or as
14 a bottle club, within their respective jurisdictions and not located
15 in a municipality levying an occupation tax as provided by Section
16 ~~401~~ 4-104 of this ~~act~~ title, not to exceed the state license fee for
17 such licensees; provided, the tax shall be levied only by the county
18 in which such licensee has its principal place of business. All
19 revenues derived from any such annual occupational tax shall be
20 deposited in the general revenue fund of the county. This section
21 shall not give any county any right to determine or regulate the
22 issuance of any license, except as specifically provided for in this
23 section, as the ABLE Commission shall have exclusive authority as to
24 issuance and regulations of licenses. No county may prescribe rules

1 or regulations in conflict with or in addition to the statutes of
2 this state or the rules of the ABLE Commission. No licensee shall
3 be held liable for engaging in business otherwise authorized under
4 this act with any other mixed beverage, beer and wine, caterer,
5 public event or special event licensee or bottle club solely because
6 such other party has failed to pay any occupational tax due under
7 this section.

8 Counties which levy an occupational tax under this section shall
9 make an annual report to the ABLE Commission, covering the fiscal
10 year, showing the number and class of licensees subject to the tax,
11 and the amount of money received therefrom, which information is to
12 be included in the annual report of the ABLE Commission submitted to
13 the Governor, and transmitted to the Legislature.

14 SECTION 24. AMENDATORY Section 135, Chapter 366, O.S.L.
15 2016 (37A O.S. Supp. 2016, Section 5-132), is amended to read as
16 follows:

17 Section 5-132. A. Except as provided in subsection D of this
18 section, no alcoholic beverage shall be labeled, offered or
19 advertised for sale in this state unless in accordance with rules
20 promulgated pursuant to the provisions of Section ~~133~~ 5-130 of this
21 ~~act~~ title and unless the brand label shall have been registered with
22 and approved by the ABLE Commission and the appropriate fee paid as
23 provided for in this section.

24

1 B. An application for registration of a brand label shall be
2 filed by and fees paid by the manufacturer or brewer of the brand if
3 the manufacturer or brewer is licensed by the ABLE Commission;
4 however, if the manufacturer is represented by a manufacturer's
5 agent, ~~or~~ licensed nonresident seller, wine and spirits wholesaler
6 or beer distributor, then the manufacturer's agent, ~~or~~ nonresident
7 seller, wine and spirits wholesaler or beer distributor shall submit
8 each label for each product the manufacturer offers for sale in this
9 state, along with payment of the brand registration fee; provided,
10 the manufacturer or brewer must fully reimburse the manufacturer's
11 agent, licensed nonresident seller, wine and spirits wholesaler or
12 beer distributor for the cost of the brand registration fee within
13 forty-five (45) days of the time the original brand registration fee
14 is paid. Cordials and wines which differ only as to age or vintage
15 year, as defined by such rules, shall be considered the same brand,
16 and those that differ as to type or class may be considered the same
17 brand by the ABLE Commission where consistent with the purposes of
18 this section.

19 C. The application for registration of a brand label shall be
20 filed on a form prescribed by the ABLE Commission, and shall contain
21 such information as the ABLE Commission shall require. Such
22 application shall be accompanied by a certified check, bank
23 officers' check or draft or money order in the amount of the annual
24

1 registration fee, or the properly prorated portion thereof
2 prescribed by this section.

3 D. 1. The annual fee for registration of any brand label for
4 spirits shall be Three Hundred Seventy-five Dollars (\$375.00). The
5 annual fee for registration of any brand label for beer shall be Two
6 Hundred Dollars (\$200.00). The annual fee for registration of any
7 brand label for wine made in the United States, or for registration
8 of any category of imported wine as defined by the Tax Commission,
9 shall be Two Hundred Dollars (\$200.00). Beer manufactured in this
10 state shall be exempt from brand label registration fees.

11 2. Each brand label registered and approved pursuant to this
12 section shall be valid for a term of up to one (1) year, expiring on
13 the June 30 next following registration, and may be renewed for
14 subsequent terms of one (1) year beginning on the July 1 following
15 the initial registration. Brand registration fees for labels
16 registered after July 1 may be prorated through the following June
17 30 on a quarterly basis. The brand registration fee shall not be
18 transferable.

19 E. If the ABLE Commission shall deny the application for
20 registration of a brand label, it shall return the registration fee
21 to the applicant, less twenty-five percent (25%) of such fee.

22 F. The ABLE Commission may at any time exempt any discontinued
23 brand from fee provisions of this section where a manufacturer or
24 wholesaler has an inventory of one hundred cases or less of liquor

1 or wine and five hundred cases or less of beer, and certifies to the
2 ABLE Commission in writing that such brand is being discontinued.

3 G. No private labels or control labels shall be approved for
4 sale in this state.

5 SECTION 25. AMENDATORY Section 144, Chapter 366, O.S.L.
6 2016 (37A O.S. Supp. 2016, Section 6-104), is amended to read as
7 follows:

8 Section 6-104. No wine or spirits wholesaler licensee shall
9 sell or deliver, and no wine or spirits retail licensee shall
10 receive:

11 1. ~~Sell or deliver any~~ Any amount of spirits or wines to any
12 licensee on ~~Saturday or~~ Sunday; or

13 2. ~~Sell or deliver any~~ Any amount of spirits or wines to any
14 licensee on New Year's Day, ~~Memorial Day,~~ the Fourth of July, ~~Labor~~
15 ~~Day,~~ Thanksgiving Day or Christmas Day.

16 SECTION 26. REPEALER 37 O.S. 2011, Section 163.11, as
17 last amended by Section 1 of this act, is hereby repealed.

18 SECTION 27. REPEALER 37 O.S. 2011, Section 163.18G, as
19 amended by Section 2 of this act, is hereby repealed.

20 SECTION 28. REPEALER 37 O.S. 2011, Section 163.18H, as
21 amended by Section 3 of this act, is hereby repealed.

22 SECTION 29. REPEALER 37 O.S. 2011, Section 163.20, as
23 amended by Section 4 of this act, is hereby repealed.

24

1 SECTION 30. REPEALER 37 O.S. 2011, Section 521, as last
2 amended by Section 5 of this act, is hereby repealed.

3 SECTION 31. REPEALER 37 O.S. 2011, Section 554.1, as
4 last amended by Section 6 of this act, is hereby repealed.

5 SECTION 32. REPEALER 37 O.S. 2011, Section 554.2, as
6 last amended by Section 7 of this act, is hereby repealed.

7 SECTION 33. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 11 and 15 of
8 this act shall become effective October 1, 2017. Sections 10, 12,
9 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30,
10 31 and 32 of this act shall become effective October 1, 2018.

11
12 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM,
13 dated 04/13/2017 - DO PASS, As Amended.

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