

An Act

ENROLLED SENATE
BILL NO. 1173

By: Bice and Smalley of the
Senate

and

Echols of the House

An Act relating to alcoholic beverages; amending Sections 4 and 13, Chapter 366, O.S.L. 2016, as amended by Sections 9 and 10, Chapter 364, O.S.L. 2017, Sections 37 and 58, Chapter 366, O.S.L. 2016, (37A O.S. Supp. 2017, Sections 1-104, 2-101, 2-125 and 2-146), which relate to the Oklahoma Alcoholic Beverage Control Act; granting certain authority to wine and spirits wholesaler; modifying powers and duties of ABLE Commission; specifying additional license fees; modifying items that may be stored in bonded warehouse with alcoholic beverages; specifying acts authorized by designating wine and spirits manufacturer's license or nonresident seller license; authorizing storage of certain beverages; allowing applicant for certain licenses to maintain other licenses under certain conditions; allowing certain license to be issued to limited liability company or partnership; and providing effective dates.

SUBJECT: Alcoholic beverage regulation

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

SECTION 1. AMENDATORY Section 4, Chapter 366, O.S.L. 2016, as amended by Section 9, Chapter 364, O.S.L. 2017 (37A O.S. Supp. 2017, Section 1-104), is amended to read as follows:

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

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

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

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

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

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

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

H. The State of Oklahoma shall take all necessary steps to ensure the timely implementation of Enrolled Senate Joint Resolution

No. 68 of the 2nd Session of the 55th Oklahoma Legislature, if approved by the voters. Consistent with this objective, the ABLE Commission shall have the power to issue interim licenses prior to October 1, 2018, as follows:

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

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

3. An interim license shall allow all qualified wine and spirits wholesalers and beer distributors to perform all activities permissible under a full license including but not limited to selling and delivering wine and/or full-strength beer to all qualified retail wine and retail beer licensees. A wine and spirits wholesaler that has been designated by a manufacturer as a distributor of its wine or spirits may post those designated products by line-item, consistent with Section 3-116.2 of this title, on September 15, 2018, for sale effective October 1, 2018. In order to qualify for an interim license, the wine and spirits wholesaler and beer distributor must comply with the provisions set forth in Article XXVIII A of the Oklahoma Constitution and ~~this act~~ the Oklahoma Alcoholic Beverage Control Act. The interim license shall convert to a full license on October 1, 2018.

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

a. such sales may begin no sooner than September 1, 2018,

- b. the beer distributor either must be assigned a beer distributor territory by the manufacturer pursuant to a distributor agreement to begin October 1, 2018, or be a brewer or an affiliate of a brewer that will be permitted to distribute beer within two territories pursuant to the provisions of subsection E of Section 3-108 of ~~the~~ this title, and
- c. the interim license only permits sales to retailers by the interim licensee either in the distribution territory as set forth in the distributor agreement or in the two territories permitted pursuant to the provisions of subsection E of Section 3-108 of this title.

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

SECTION 2. AMENDATORY Section 13, Chapter 366, O.S.L. 2016, as amended by Section 10, Chapter 364, O.S.L. 2017 (37A O.S. Supp. 2017, Section 2-101), is amended to read as follows:

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

- 1. Brewer License..... \$1,250.00
- 2. Small Brewer License..... \$125.00
- 3. Distiller License..... \$3,125.00
- 4. Winemaker License..... \$625.00
- 5. Small Farm Winery License..... \$75.00
- 6. Rectifier License..... \$3,125.00

- 7. Wine and Spirits Wholesaler License..... \$3,000.00
- 8. Beer Distributor License..... \$750.00
- 9. The following retail spirits license fees shall be determined by the latest Federal Decennial Census:
 - a. Retail Spirits License for cities and towns from 200 to 2,500 population..... \$305.00
 - b. Retail Spirits License for cities and towns from 2,501 to 5,000 population..... \$605.00
 - c. Retail Spirits License for cities and towns over 5,000 population..... \$905.00
- 10. Retail Wine License..... \$1,000.00
- 11. Retail Beer License..... \$500.00
- 12. Mixed Beverage License..... \$1,005.00
 - (initial license)
 - \$905.00
 - (renewal)
- 13. Mixed Beverage/Caterer Combination License..... \$1,250.00
- 14. On-Premises Beer and Wine License..... \$500.00
 - (initial license)
 - \$450.00
 - (renewal)
- 15. Bottle Club License..... \$1,000.00
 - (initial license)

- \$900.00
- (renewal)
- 16. Caterer License..... \$1,005.00
- (initial license)
- \$905.00
- (renewal)
- 17. Annual Special Event License..... \$55.00
- 18. Quarterly Special Event License..... \$55.00
- 19. Hotel Beverage License..... \$1,005.00
- (initial license)
- \$905.00
- (renewal)
- 20. Airline/Railroad Beverage License..... \$1,005.00
- (initial license)
- \$905.00
- (renewal)
- 21. Agent License..... \$55.00
- 22. Employee License..... \$30.00
- 23. Industrial License..... \$23.00
- 24. Carrier License..... \$23.00
- 25. Private Carrier License..... \$23.00

- 26. Bonded Warehouse License..... \$190.00
- 27. Storage License..... \$23.00
- 28. Nonresident~~r~~ Seller License or Manufacturer's License..... \$750.00
- 29. Manufacturer's Agent License..... \$55.00
- 30. Sacramental Wine Supplier License..... \$100.00
- 31. Charitable Auction License..... \$1.00
- 32. Charitable Alcoholic Beverage License..... \$55.00
- 33. Winemaker Self-Distribution License..... \$750.00
- 34. Annual Public Event License.....\$1,005.00
- 35. One-Time Public Event License..... \$255.00
- 36. Small Brewer Self-Distribution License..... \$750.00
- 37. Brewpub License..... \$1,005.00
- 38. Brewpub Self-Distribution License..... \$750.00

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

2. There shall be added to the fee for a Mixed Beverage/Caterer Combination License an administrative fee, which shall not be deemed to be a license fee, in the amount of Two Hundred Fifty Dollars (\$250.00), which shall be paid at the same time and in the same

manner as the license fee prescribed by paragraph 11 of subsection A of this section.

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

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

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

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

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

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

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

1. Nonresident Seller or Manufacturer License..... \$2,500.00

2. Wine and Spirits Wholesaler License..... \$2,500.00
3. Beer Distributor..... \$1,000.00
4. Retail Spirits License for cities and towns
over 5,000 population..... \$250.00
5. Retail Spirits License for cities and towns
from 2,501 to 5,000 population..... \$200.00
6. Retail Spirits License for cities and towns
from 200 to 2,500 population..... \$150.00
7. Retail Wine License..... \$250.00
8. Retail Beer License..... \$250.00
9. Mixed Beverage License..... \$25.00
10. Mixed Beverage/Caterer Combination License..... \$25.00
11. Caterer License..... \$25.00
12. On-Premises Beer and Wine License..... \$25.00
13. Annual Public Event License..... \$25.00
14. Small Farm Winery License..... \$25.00
15. Small Brewer License..... \$35.00

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

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

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

SECTION 3. AMENDATORY Section 37, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2017, Section 2-125), is amended to read as follows:

Section 2-125. A bonded warehouse license shall authorize the holder thereof to receive and store alcoholic beverages and nonalcoholic beverages for the holders of storage licenses on the licensed premises of the bonded warehouse licensee. No goods, wares or merchandise other than alcoholic beverages and nonalcoholic beverages may be stored in the same bonded warehouse with alcoholic beverages. The holder of a bonded warehouse license shall furnish and file with the ABLE Commission a bond running to all bailers of alcoholic beverages under proper storage licenses and their assignees (including mortgagees or other bona fide lienholders) conditioned upon faithful performance of the terms and conditions of such bailments.

SECTION 4. AMENDATORY Section 58, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2017, Section 2-146), is amended to read as follows:

Section 2-146. A. The ABLE Commission shall refuse to issue a wine and spirits wholesaler, beer distributor, retail spirits, retail wine or retail beer license, either on an original application or a renewal application, if it has reasonable grounds to believe and finds any of the following to be true:

1. Except in the case of a beer distributor, that the applicant is not a citizen of the United States or is not a qualified elector in this state, or has not been a continuous resident of this state for the five (5) years next preceding the application for the license;
2. That the applicant is under twenty-one (21) years of age;
3. That the applicant or any partner, or spouse of the applicant or any partner, has been convicted of a felony;

4. That the applicant or any partner, or spouse of the applicant or any partner, has been convicted of a violation of any state or federal law relating to alcoholic beverages, has forfeited a bond while any charge of such violation was pending, nor may any license be granted for any purpose under the Oklahoma Alcoholic Beverage Control Act to an Oklahoma resident, who has held or whose spouse has held a Federal Liquor Stamp in Oklahoma before the adoption of Article XXVIII A of the Oklahoma Constitution unless the Liquor Stamp was granted for supplying alcoholic beverages to a federal military installation, or was granted under the Oklahoma Alcoholic Beverage Control Act;

5. That the applicant or any partner has, within twelve (12) months next preceding the date of the application, violated any provision of the Oklahoma Alcoholic Beverage Control Act or rule of the ABLE Commission promulgated pursuant hereto. Provided, however, that if the ABLE Commission has, during such twelve-month period, suspended any license sought to be renewed, such renewal application may be approved if the term of the suspension has been completed and the applicant has complied with any special conditions imposed in connection with the suspension;

6. That the applicant is not of good moral character, or that the applicant is in the habit of using alcoholic beverages to excess, or is mentally incapacitated. Provided, that the record in any municipal court showing a conviction of violation of any municipal ordinances or state statutes involving moral character or public nuisance obtained after passage and approval of the Oklahoma Alcoholic Beverage Control Act shall be received in evidence by the ABLE Commission;

7. That the applicant does not own or have a written lease for the premises for which a license is sought;

8. That the applicant, within twelve (12) months next preceding the date of application, has been the holder of a license revoked for cause;

9. That the applicant is not the real party in interest, or intends to carry on the business authorized by the license as the agent of another;

10. That the applicant, in the case of an application for renewal of any license, would not be eligible for such license on a first application;

11. That the applicant is a person who appoints or is a law enforcement official or is an employee of the ABLE Commission;

12. That the proposed location of the licensed premises would violate a valid municipal nondiscriminatory zoning ordinance;

13. That, in the case of an application for a wine and spirits wholesaler license or beer distributor license, any manufacturer, including an officer, director or principal stockholder thereof or any partner, has any financial interest in the business to be conducted under the license, unless otherwise permitted by law;

14. That the issuance of the license applied for would result in a violation of any provision of the Oklahoma Alcoholic Beverage Control Act;

15. That, in the case of an application for a wine and spirits wholesaler or beer distributor license, the applicant or any partner, or spouse of the applicant or any partner, is the holder or partner of the holder of any other class of license issued under the provisions of the Oklahoma Alcoholic Beverage Control Act, other than an agent or employee license for employment by the applicant, or a storage license, bonded warehouse license, carrier license or private carrier license; provided, nothing shall prohibit a wine and spirits wholesaler, who is otherwise qualified, from maintaining beer distributor licenses in the state, nor a beer distributor, who is otherwise qualified, from maintaining a wine and spirits wholesaler license in the state;

16. That, in the case of an application for a retail spirits, retail wine or retail beer license, the applicant or any partner is the holder or partner of the holder, or employee of such holder of any other class of license issued under the provisions of the Oklahoma Alcoholic Beverage Control Act, other than a storage license or an employee license for the proposed licensed premises of the applicant, provided, nothing in this title shall prohibit an applicant for a retail wine and/or retail beer license from maintaining a separate mixed beverage, caterer, mixed

beverage/caterer combination license, and/or an on-premise beer and wine license, if the retail wine and/or retail beer license is not situated within or adjacent to the same physical space wherein the on-premises license is maintained; or

17. That the applicant or any partner, spouse, employee or other person affiliated with the applicant is not in compliance with the tax laws of this state as required in Article XXVIII A of the Oklahoma Constitution.

B. The provisions of this section shall not operate to prohibit the issuance of a beer distributor license to a corporation or partnership.

SECTION 5. Section 1 of this act shall become effective July 1, 2018.

SECTION 6. Sections 2, 3 and 4 of this act shall become effective October 1, 2018.

Passed the Senate the 3rd day of May, 2018.

Presiding Officer of the Senate

Passed the House of Representatives the 3rd day of May, 2018.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____