

An Act

ENROLLED SENATE
BILL NO. 646

By: Bice of the Senate

and

Mulready of the House

An Act relating to alcoholic beverages; amending 37 O.S. 2011, Sections 163.11, as last amended by Section 1, Chapter 205, O.S.L. 2013, 163.18G, 163.18H, 163.20, 521, as last amended by Section 5 of Enrolled House Bill No. 1302 of the 1st Session of the 56th Oklahoma Legislature, and 554.1 and 554.2, as amended by Sections 15 and 16, Chapter 298, O.S.L. 2014 (37 O.S. Supp. 2016, Sections 163.11, 554.1 and 554.2), which relate to the sale, shipment, licensing, taxing and legal remedies associated with low-point beer and alcoholic beverages; providing that under certain circumstances certain actions shall not constitute violations of certain provisions of law, create liability or be subject to fines, orders, penalties or license revocations; deeming certain permits valid under certain conditions; exempting certain licensees from obligations to make certain independent determinations; providing that certain licenses may be relied upon by other licensees; amending Sections 3, 4, 13, 19, 20, 38, 78, 80, 81, 86, 101, 102, 135 and 144, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Sections 1-103, 1-104, 2-101, 2-107, 2-108, 2-126, 3-108, 3-110, 3-111, 3-116, 4-104, 4-105, 5-132 and 6-104), which relate to the sale, regulation, licensing, distribution, marketing and taxation of alcoholic beverages; modifying definitions; clarifying date; clarifying references; allowing for refrigeration of product on certain date; expanding eligibility for interim licenses; limiting allowable sales to interim licensees; providing that certain licenses may be

relied upon by other licensees; exempting certain licensees from obligations to make certain independent determinations; providing that under certain circumstances certain actions shall not create liability; modifying authorities of wine and spirits wholesaler licensees; eliminating certain exemption pertaining to storage licensee owning multiple licensed establishments; modifying certain limitation related to direct wine shipments; clarifying certain dates; applying certain distribution requirements and limitations on cider manufacturers; requiring certain assignment of exclusive rights to distribute under certain conditions; establishing the rights and obligations of cider manufacturers under certain conditions; providing processes, requirements and limitations related to manufacturers and nonresident sellers that have not designated a wine or spirits wholesaler; providing exemption to such processes, requirements and limitations; providing price posting requirements related to sales of products with no designated wine and spirits wholesaler; providing exemption for certain products; providing for severability of certain provisions; providing price posting requirements related to sales of products having a designated wine and spirits wholesaler; clarifying applicability; requiring certain periodic electronic publications and distribution of price catalog to certain entities; requiring certain content be included in price catalog; limiting ability to modify price catalog; providing timeline for when price amendments become applicable; requiring certain publication of price amendments; authorizing additional types of representatives to submit labels and fee payments as part of the brand label registration process; requiring certain reimbursement of representative within certain time period; modifying prohibition on wine and spirits wholesaler sales and deliveries on certain days and dates; repealing 37 O.S. 2011, Sections 163.11, as last amended by Section 1 of this act, 163.18G, as amended by Section 2 of this act, 163.18H, as amended by

Section 3 of this act, 163.20, as amended by Section 4 of this act, 521, as last amended by Section 5 of this act, 554.1, as last amended by Section 6 of this act, and 554.2, as last amended by Section 7 of this act, which relate to the sale, shipment, licensing and taxing of, and legal remedies associated with, low-point beer and alcoholic beverages; repealing Section 1 of Enrolled House Bill No. 1540 of the 1st Session of the 56th Oklahoma Legislature, which relates to licensing; providing for codification; and providing effective dates.

SUBJECT: Alcoholic beverages

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

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

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

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

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

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

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

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

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

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

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

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

J. All testimony before the district court shall be under oath.

K. A judge of the district court, upon five (5) days' notice to the person holding the permit, shall revoke the permit for any one of the following reasons:

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

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

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

4. Permitting persons under the age of twenty-one (21) in a separate or enclosed bar area which has as its main purpose the

selling or serving of low-point beer for consumption on the premises, in violation of the provisions of Sections 241 through 246 of this title;

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

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

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

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

9. A material false statement in the application.

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

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

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

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

- a. If no objection is filed within ten (10) days after service of notice of the application, the court clerk may grant the special event permit.
- b. If a written objection or request for restrictions is filed within ten (10) days after service of the application, a judge of the district court, upon five (5) days' notice to the applicant, chief of police or marshal of the city or town, and sheriff and district attorney of the county, where the event is to occur, shall determine whether the special permit should be granted, restricted or denied, based upon the totality

of circumstances concerning the proposed event, including, but not limited to, the location of the event, qualifications of the applicant, history of the applicant, and specific concerns regarding public safety.

3. A special event permit issued under this subsection shall authorize the holder thereof to sell and distribute low-point beer for a period not to exceed ten (10) consecutive days from the date of issuance. A separate permit shall be required for each individual place of business, whether permanent or a temporary assemblage. Provided, retail dealers shall not be required to obtain a special permit for each bar or service unit within the same enclosed area or within the general vicinity of each other for events held outside a physical structure. A special event permit shall not be renewable. A municipality shall not, by ordinance or otherwise, refuse to issue a special event permit or special event license for any event for which the applicant has received a special event permit as provided in this section.

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

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

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

Provided, that this defense shall not relieve from liability any person cited for a violation of this section if such person failed to exercise reasonable diligence to determine whether the physical description and picture on the driver license or other government-issued photo identification was that of the individual who presented

it. The availability of the defense described in this subsection does not affect the availability of any other defense under any other provision of law.

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

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

Section 163.18G Any aggrieved person shall have a cause of action for violations of the provisions of the Low-Point Beer Distribution Act and Section 231 of this title and may recover damages or obtain injunctive relief or both; provided however, that no licensed wholesaler shall be liable to any aggrieved person for the sale of low-point beer to a retailer who holds a permit from the Oklahoma Tax Commission pursuant to Section 163.7 of this title, regardless of whether such retailer holds a valid permit from the district court of the relevant county pursuant to Section 163.11 of this title or such district court permit has expired. Any permit issued by the Oklahoma Tax Commission pursuant to Section 163.7 of this title shall be deemed valid, and licensed wholesalers shall have no obligation to independently determine the validity of such permit.

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

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

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

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

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

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

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

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

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

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

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

F. Notwithstanding the provisions of subsections A, B, C, D and E of this section, no licensed wholesaler shall be subject to any fines, orders or other penalties imposed by the Oklahoma Tax Commission as a result of the sale of low-point beer to a retailer who holds a permit from the Oklahoma Tax Commission pursuant to

Section 163.7 of this title, regardless of whether such retailer holds a valid permit from the district court of the relevant county pursuant to Section 163.11 of this title or such district court permit has expired. Any permit issued by the Oklahoma Tax Commission pursuant to Section 163.7 of this title shall be deemed valid, and licensed wholesalers shall have no obligation to independently determine the validity of such permit.

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

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

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

C. Notwithstanding the provisions of subsections A and B of this section, no licensed wholesaler shall be guilty of a misdemeanor or subject to any fines or license revocation as a result of the sale of low-point beer to a retailer who holds a

permit from the Oklahoma Tax Commission pursuant to Section 163.7 of this title, regardless of whether such retailer holds a valid permit from the district court of the relevant county pursuant to Section 163.11 of this title or such district court permit has expired. Any permit issued by the Oklahoma Tax Commission pursuant to Section 163.7 of this title shall be deemed valid, and licensed wholesalers shall have no obligation to independently determine the validity of such permit.

SECTION 5. AMENDATORY 37 O.S. 2011, Section 521, as last amended by Section 5 of Enrolled House Bill No. 1302 of the 1st Session of the 56th Oklahoma Legislature, is amended to read as follows:

Section 521. A. A brewer license shall authorize the holder thereof: To manufacture, bottle, package, and store beer on licensed premises; to sell beer in this state to holders of Class B wholesaler licenses and retail licenses and to sell beer out of this state to qualified persons; to sell beer produced by the licensee to consumers twenty-one (21) years of age or older on the premises of the brewery; and to serve free samples of beer produced by the licensee to visitors twenty-one (21) years of age or older. For purposes of this section, no visitor may sample more than a total of twelve (12) fluid ounces of beer per day. The brewer must restrict the distribution and consumption of beer samples to an area within the licensed premises designated by the brewer. A current floor plan that includes the designated sampling area must be on file with the Oklahoma Alcoholic Beverage Laws Enforcement (ABLE) Commission. No visitor under twenty-one (21) years of age shall be permitted to enter this designated sampling area when samples are being distributed or consumed. Samples and sales may only be distributed or consumed between 10:00 a.m. and 9:00 p.m. Samples and sales of beer made or served by a brewery under this section shall not be considered a "sale" of beer within the meaning of Article XXVIII of the Oklahoma Constitution or Section 506 of this title; however, such samples and sales of beer shall be considered beer removed or withdrawn from the brewery for "use or consumption" within the meaning of Section 542 of this title for excise tax determination and reporting requirements.

B. A distiller license shall authorize the holder thereof: To manufacture, bottle, package, and store spirits on licensed

premises; to sell spirits in this state to licensed wholesalers and manufacturers only; to sell spirits out of this state to qualified persons; to purchase from licensed distillers and rectifiers in this state, and import spirits from without this state for manufacturing purposes in accordance with federal laws and regulations.

C. A winemaker license shall authorize the holder thereof: To manufacture (including such mixing, blending and cellar treatment as authorized by federal law), bottle, package, and store on licensed premises wine containing not more than twenty-four percent (24%) alcohol by volume, provided the bottle or package sizes authorized shall be limited to the capacities approved by the United States Alcohol and Tobacco Tax and Trade Bureau; to sell wine in this state to licensed wholesalers and manufacturers; to sell bottles of wine produced at the winery from grapes and other fruits and berries grown in this state, if available, for either on-premises or off-premises consumption to consumers on the premises of the winery; to serve visitors on the licensed premises samples of wine produced on the premises; to serve free samples of wine produced at the winery at festivals and trade shows; to sell wine produced at the winery, ~~in original sealed containers,~~ for either on-premises or off-premises consumption at festivals and trade shows; to sell wine out of this state to qualified persons; to purchase from licensed winemakers, distillers and rectifiers in this state, and to import into this state wine, brandy and fruit spirits for use in manufacturing in accordance with federal laws and regulations; to sell and serve Oklahoma-manufactured wine, mulled wine or spiced wine, mixed with nonalcoholic beverages or food items such as water, sugar, fruits and vegetables, at any temperature for either on-premises or off-premises consumption; provided, a winemaker either within or without this state that annually produces no more than ten thousand (10,000) gallons of wine may elect to sell and self-distribute the wine produced by such winemaker directly to licensed retail package stores and restaurants in this state; and provided further that:

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

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

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

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

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

F. 1. A wholesaler license shall authorize the holder thereof: To purchase and import into this state spirits and wines from persons authorized to sell same who are the holders of a nonresident seller license, and their agents who are the holders of manufacturers agent licenses; to purchase spirits and wines from licensed distillers, rectifiers and winemakers in this state; to purchase spirits and wines from licensed wholesalers, to the extent set forth in paragraphs 2 and 3 of this subsection; to sell in retail containers in this state to retailers, mixed beverage,

caterer, special event, public event, hotel beverage or airline/railroad beverage licensees, spirits and wines which have been received and unloaded at the bonded warehouse facilities of the wholesaler before such sale; to sell to licensed wholesalers, to the extent set forth in paragraphs 2 and 3 of this subsection, spirits and wines which have been received and unloaded at the bonded warehouse facilities of the wholesaler before such sale; and to sell spirits and wines out of this state to qualified persons. Provided, however, sales of spirits and wine in containers with a capacity of less than one-twentieth (1/20) gallon by a holder of a wholesaler license shall be in full case lots and in the original unbroken case. Wholesalers shall be authorized to place such signs outside their place of business as are required by Acts of Congress and by such laws and regulations promulgated under such Acts.

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

- a. the total volume of spirits sales of the wholesaler, by liter, from the previous calendar year, and
- b. the total volume of wine sales of the wholesaler, by liter, from the previous calendar year, and
- c. the volume of sales of each brand of spirits or wine of the wholesaler, by liter, from the previous calendar year.

A wholesaler who did not post any sales of spirits, wine or of a particular brand in the previous calendar year shall be deemed to have sold the same volume of spirits, wine or of a particular brand as the wholesaler posting the smallest volumes of sales in spirits, wine or of a particular brand for that year for the purposes of this paragraph. Notwithstanding the foregoing, wholesalers shall not

purchase any inventory in spirits or wine from any other wholesaler until such time that the purchasing wholesaler possesses an inventory valued at no less than Two Hundred Fifty Thousand Dollars (\$250,000.00). Inventory valuation shall be based on the original actual price paid by the purchasing wholesaler to the nonresident seller for the inventory.

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

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

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

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

A fifteen-day supply of a particular brand for a particular wholesaler shall be based upon the market share of the wholesaler,

determined by first multiplying the total number of liters of such brand sold by all wholesalers to all retailers during the previous calendar year by the percentage that the total sales of wine and spirits of the particular wholesaler, in liters, for such calendar year bears to the total sales of wine and spirits, in liters, reported by all wholesalers for such calendar year; and then dividing by twenty-four (24); provided, that a fifteen-day supply for a wholesaler who has not been in business for the entirety of the previous calendar year shall be deemed to be equal to that of the wholesaler who was in business for the entirety of the previous calendar year and who reported the lowest volume of sales of wine and spirits, in liters, of any wholesaler having been in business for such period.

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

H. A package store license shall authorize the holder thereof: To purchase alcohol, spirits, beer, and wine in retail containers from the holder of a brewer, wholesaler or Class B wholesaler license and to purchase wine from a winemaker who is permitted and has elected to self-distribute as provided in Section 3 of Article XXVIII of the Oklahoma Constitution and to sell same on the licensed premises in such containers to consumers for off-premises consumption only and not for resale; provided, wine, beer, and spirits may be sold to charitable organizations that are holders of charitable alcoholic beverage auction or charitable alcoholic beverage event licenses. All alcoholic beverages that are sold by a package store are to be sold at ordinary room temperature.

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

Sales and service of mixed beverages by holders of mixed beverage licenses shall be limited to the licensed premises of the licensee unless the holder of the mixed beverage license also obtains a caterer license or a mixed beverage/caterer combination license. A mixed beverage license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A separate license shall be required for each place of business. No mixed beverage license shall be issued for any place of business functioning as a motion picture theater, as defined by Section 506 of this title. A mixed beverage licensee whose main purpose is hosting live performance art presentations may utilize the services of a licensed caterer for its alcoholic beverage service as long as it is not open to the public more than one hundred twenty (120) days per year.

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

K. A caterer license shall authorize the holder thereof: To sell mixed beverages for on-premises consumption incidental to the sale or distribution of food at particular functions, occasions, or events which are private and temporary in nature. A caterer license shall not be issued in lieu of a mixed beverage license. A caterer license shall only be issued or utilized in counties of this state

where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A separate license shall be required for each place of business.

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

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

2. A quarterly special event license shall authorize the holder thereof: To sell and distribute mixed beverages for consumption on the premises for which the license has been issued for up to three events to be held over a period not to exceed three (3) months. For purposes of this paragraph, an event shall not exceed a period of ten (10) consecutive days. A quarterly special event license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. The holder of a quarterly special event license shall provide written notice to the ABLE Commission of each special event not less than ten (10) days before the event is held.

3. An annual public event license shall authorize the holder thereof: to sell and distribute mixed beverages for consumption on the premises for which the license has been issued for up to six events to be held over a period not to exceed one (1) year. The applicant for an annual public event license, who does not already

hold a license issued by the ABLE Commission, shall make application not less than sixty (60) days before its first event. The ABLE Commission shall have the authority to waive the sixty-day requirement at its discretion. For purposes of this paragraph, an event shall not exceed a period of three (3) consecutive days. An annual public event license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. The holder of an annual public event license shall provide written notice to the ABLE Commission of each subsequent public event not less than ten (10) days before the event is held. A public event license shall not be used in lieu of a mixed beverage license. The holder of an annual public event license may choose to utilize the services of a licensed caterer to provide and distribute the alcoholic beverages at their events. When the applicant chooses to utilize the services of a licensed caterer, the applicant shall declare upon application which licensed caterer will be used. The licensed caterer shall be responsible for payment of all applicable mixed beverage taxes through the existing Mixed Beverage Tax Permit issued to his or her business by the Oklahoma Tax Commission.

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

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

N. An airline/railroad beverage license shall authorize the holder thereof: To sell or serve alcoholic beverages in or from any size container on a commercial passenger airplane or railroad operated in compliance with a valid license, permit or certificate issued under the authority of the United States or this state, even though the airplane or train, in the course of its travel, may cross an area in which the sale of alcoholic beverages by the individual drink is not authorized and to store alcoholic beverages in sealed containers of any size at any airport or station regularly served by the licensee, in accordance with rules promulgated by the Alcoholic Beverage Laws Enforcement Commission. Alcoholic beverages purchased by the holder of an airline/railroad license from the holder of a wholesaler license shall be presumed to be purchased for consumption outside the State of Oklahoma or in interstate commerce, and shall be exempt from the excise tax provided for in Section 553 of this title.

O. An agent license shall authorize the holder thereof: To represent only the holders of licenses within this state, other than retailers, authorized to sell alcoholic beverages to retail dealers in Oklahoma, and to solicit and to take orders for the purchase of alcoholic beverages from retailers including licensees authorized to sell alcoholic beverages by the individual drink for on-premises consumption. Such license shall be issued only to agents and employees of the holder of a license under the Oklahoma Alcoholic Beverage Control Act, but no such license shall be required of an employee making sales of alcoholic beverages on licensed premises of

the employee's principal. No person holding an agent license shall be entitled to a manufacturers agent license.

P. An employee license shall authorize the holder thereof: To work in a package store, mixed beverage establishment, beer and wine establishment, bottle club, public event or any establishment where alcohol or alcoholic beverages are sold, mixed, or served. Persons employed by a mixed beverage licensee, beer and wine licensee, public event licensee or a bottle club who do not participate in the service, mixing, or sale of mixed beverages shall not be required to have an employee license. Provided, however, that a manager employed by a mixed beverage licensee, public event licensee or a bottle club shall be required to have an employee license whether or not the manager participates in the service, mixing or sale of mixed beverages. Applicants for an employee license must have a health card issued by the county in which they are employed, if the county issues such a card. Employees of special event, caterer, unless catering a mixed beverage licensed premises, or airline/railroad beverage licensees shall not be required to obtain an employee license. Persons employed by a hotel licensee who participate in the stocking of hotel room mini-bars or in the handling of alcoholic beverages to be placed in such devices shall be required to have an employee license.

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

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

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

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

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

Any person receiving alcohol under authority of an industrial license who shall use, permit, or cause same to be used for purposes

other than authorized purposes specified above, and all such alcohol, shall be liable to all provisions of the Oklahoma Alcoholic Beverage Control Act, including payment of tax thereon.

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

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

S. A private carrier license may be issued to any carrier other than a common carrier described in subsection Q of this section. Such license shall authorize the holder thereof to transport alcoholic beverages other than wine sold directly by a winemaker or winery to a retail package store or restaurant into, within, or out of this state under such terms, conditions, limitations, and restrictions as the ABLE Commission may prescribe by order issuing such license and by regulations. No carrier license or private carrier license shall be required of licensed brewers, distillers, winemakers, rectifiers, wholesalers, or Class B wholesalers, to transport alcoholic beverages from the place of purchase or acquisition to the licensed premises of such licensees and from such licensed premises to the licensed premises of the purchaser in vehicles owned or leased by such licensee when such transportation is for a lawful purpose and not for hire.

No carrier license or private carrier license shall be required of the holder of a package store, mixed beverage, caterer, special event, hotel beverage, public event or airline/railroad license to pick up alcoholic beverage orders from the licensees' wholesaler or Class B wholesaler from whom they are purchased, and to transport such alcoholic beverages from the place of purchase or acquisition

to the licensed premise of such licensees in vehicles owned or under the control of such licensee or a licensed employee of such licensee under such terms, conditions, limitations and restrictions as the ABLE Commission may prescribe.

T. A bonded warehouse license shall authorize the holder thereof: To receive and store alcoholic 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 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.

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

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

2. Any licensee who is the holder of a mixed beverage/caterer combination license or the holder of a mixed beverage license and a hotel beverage license who is issued a storage license shall store all inventories of alcoholic beverages either on the premises of the mixed beverage establishment or in the warehouse;

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

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

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

V. A sacramental wine supplier license shall authorize the holder thereof: To sell, ship or deliver sacramental wine to any religious corporation or society of this state holding a valid exemption from taxation issued pursuant to Section 501(a) of the Internal Revenue Code, 1986, and listed as an exempt organization in Section 501(c)(3) of the Internal Revenue Code, 1986, of the United States, as amended.

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

Sales and service of beer and wine by holders of beer and wine licenses shall be limited to the licensed premises of the licensee unless the holder of the beer and wine license also obtains a caterer license. A beer and wine license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A

separate license shall be required for each place of business. No beer and wine license shall be issued for any place of business functioning as a motion picture theater, as defined by Section 506 of this title. No spirits shall be stored, possessed or consumed on the licensed premises of a beer and wine licensee.

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

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

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

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

A charitable alcoholic beverage event shall be conducted solely to raise funds for charitable purposes. A charitable alcoholic beverage license will allow the event attendees access to tastings, samples, dinners, and alcoholic beverages as parts of their entrance fee or ticket price. Wine, spirits and/or beer used in, served, or consumed at a charitable alcoholic beverage event may be purchased by the charitable organization or donated by any person or entity. The charitable alcoholic beverage event license shall be issued for a period not exceeding four (4) days. Only eight such licenses may be issued to an organization in any twelve-month period. The charitable organization holding a charitable alcoholic beverage event license shall not be required to obtain a special event license. Charitable auction and charitable alcoholic beverage event license holders may also utilize a licensed caterer to provide additional alcohol services at the event and on the premises. The charitable auction license shall authorize the holder thereof to

auction wine, spirits, and/or beer purchased from a retail package store or received as a gift from an individual if the auction is conducted to raise funds for charitable purposes. The charitable auction license shall be issued for a period not to exceed two (2) days. Only four such licenses shall be issued to an organization in any twelve-month period. The maximum amount of wine, spirits, and/or beer auctioned pursuant to the charitable auction license shall not exceed fifty (50) gallons. All wine, beer, and spirits auctioned pursuant to the charitable auction license shall be registered and all fees and taxes shall be paid in accordance with the Oklahoma Alcoholic Beverage Control Act.

No charitable alcoholic beverage event license shall be required for an organization, association or nonprofit corporation which is an economic development chamber or similar entity, provided the event is not conducted primarily for fundraising purposes, and provided the services of a licensed caterer are used to provide and distribute the alcoholic beverages at the event.

Y. A mixed beverage/caterer combination license shall authorize the holder thereof: To purchase or sell mixed beverages as specifically provided by law for the holder of a mixed beverage license or a caterer license. All provisions of the Oklahoma Alcoholic Beverage Control Act applicable to mixed beverage licenses or caterer licenses, or the holders thereof, shall also be applicable to mixed beverage/caterer combination licenses or the holders thereof, except where specifically otherwise provided. A mixed beverage/caterer combination license shall only be issued in counties of this state where the sale of alcoholic beverages by the individual drink for on-premises consumption has been authorized. A separate license shall be required for each place of business.

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

Z. A small farm winery license shall authorize the holder thereof: To manufacture and bottle wines produced by that small

farm winery. In addition, a small farm winery license authorizes the holder of that permit to bottle and sell wines produced by another small farm winery. In order for a small farm winery to bottle and sell another small farm winery's products, both the selling winery and the buying winery shall be small farm winery permit holders. A small farm wine may display the trademarked "Oklahoma Grown" sticker available from the Oklahoma Grape Industry Council.

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

BB. Except as provided in Sections 554.1 and 554.2 of this title with respect to cities, towns and counties, and except as may be provided under Title 68 of the Oklahoma Statutes with respect to the Oklahoma Tax Commission, no license or permit other than licenses as provided under the Oklahoma Alcoholic Beverage Control Act shall be required of any licensee by any agency, instrumentality or political subdivision of this state to engage in any activity covered by the Oklahoma Alcoholic Beverage Control Act anywhere within the State of Oklahoma and no agency, instrumentality or political subdivision of this state shall interfere with the ABLE Commission's regulation of, or a wholesaler's performance of, the sale, distribution, possession, handling or marketing of alcoholic beverages on any premises of any licensee as defined in Section 506 of this title. Any license issued by the ABLE Commission under this title may be relied upon by other licensees as a valid license. 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 6. AMENDATORY 37 O.S. 2011, Section 554.1, as amended by Section 15, Chapter 298, O.S.L. 2014 (37 O.S. Supp. 2016, Section 554.1), is amended to read as follows:

Section 554.1 Cities and towns are hereby authorized to levy an annual occupational tax for the privilege of operating as a retailer, mixed beverage, beer and wine, caterer, public event or special event licensee, bottle club, manufacturer, wholesaler or

Class B wholesaler, within their respective jurisdictions, not to exceed the state license fee for such licensees; provided that the aforementioned tax shall be levied only by the city or town in which such licensee has his principal place of business. This section shall not give any city or town any right to determine or regulate the issuance of any license, except as specifically provided for in this section, as the Alcoholic Beverage Laws Enforcement Commission shall have exclusive authority as to issuance and regulations of said licenses and no city or town may prescribe rules or regulations in conflict with or in addition to the statutes of this state or the rules of the ABLE Commission. No licensee shall be held liable for engaging in business otherwise authorized under this title with any other retailer, mixed beverage, beer and wine, caterer, public event or special event licensee, bottle club, manufacturer, wholesaler or Class B wholesaler solely because such other party has failed to pay any occupational tax due under this section.

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

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

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

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

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

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

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

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

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

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

4. "Applicant" means any individual, legal or commercial business entity, or any individual involved in any legal or

commercial business entity allowed to hold any license issued in accordance with the Oklahoma Alcoholic Beverage Control Act;

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

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

7. "Beer distributor" means and includes any person licensed to distribute beer for retail sale in the state, but does not include a holder of a small brewer self-distribution license or brewpub self-distribution license. The term "distributor", as used in this act, shall be construed to refer to a beer distributor;

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

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

10. "Brand extension" means:

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

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

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

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

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

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

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

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

13. "Cider" means any alcoholic beverage obtained by the alcoholic fermentation of fruit juice, including but not limited to flavored, sparkling or carbonated cider. For the purposes of the distribution of this product, cider may be distributed by either wine and spirits wholesalers or beer distributors;

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

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

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

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

18. "Distributor agreement" means the written agreement between the distributor and manufacturer as set forth in Section ~~78~~ 3-108 of this ~~act~~ title;

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

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

- a. as a low-point beer pursuant to the Low-Point Beer Distribution Act in effect immediately prior to the effective date of this act, and
- b. as strong beer pursuant to the Alcoholic Beverage Control Act in effect immediately prior to the effective date of this act,

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

21. "Fair market value" means the value in the subject territory covered by the written agreement with the distributor or

wholesaler that would be determined in an arm's length transaction entered into without duress or threat of termination of the distributor's or wholesaler's rights and shall include all elements of value, including goodwill and going-concern value;

22. "Good cause" means:

- a. failure by the distributor to comply with the material and reasonable provisions of a written agreement or understanding with the manufacturer, or
- b. failure by the distributor to comply with the duty of good faith;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53. "Small brewer" means a brewer who manufactures less than twenty-five thousand (25,000) barrels of beer annually pursuant to a validly issued Small Brewer License hereunder;

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

55. "Small farm winery" means a wine-making establishment that does not annually produce for sale more than fifteen thousand

(15,000) gallons of wine as reported on the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of Wine Premises Operations (TTB Form 5120.17);

56. "Sparkling wine" means champagne or any artificially carbonated wine;

57. "Special event" means an entertainment, recreation or marketing event that occurs at a single location on an irregular basis and at which alcoholic beverages are sold;

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

59. "Strong beer" means beer which, prior to the effective date of this act, was distributed pursuant to the Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of Title 37 of the Oklahoma Statutes;

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

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

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

63. "Wine and spirits wholesaler" or "wine and spirits distributor" means and includes any sole proprietorship or partnership licensed to distribute wine and spirits in the state. The term "wholesaler", as used in this act, shall be construed to refer to a wine and spirits wholesaler; and

64. "Wine" means and includes any beverage containing more than one-half of one percent (1/2 of 1%) alcohol by volume and not more

than twenty-four percent (24%) alcohol by volume at sixty (60) degrees Fahrenheit obtained by the fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, and includes vermouth and sake, known as Japanese rice wine;

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

SECTION 9. AMENDATORY Section 4, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, 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 ~~recreated~~ re-created. The purpose of the Commission shall be to enforce the alcoholic beverage laws of the ~~State~~ 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 ~~the effective date of this act~~ 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 ~~act~~ 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 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 ~~until after~~ 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. 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 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~~ Dollars (\$25,000.00).

SECTION 10. AMENDATORY Section 13, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, 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

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, 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 shall be deposited in the Alcoholic

Beverage Governance Revolving Fund established pursuant to Section ~~434~~ 5-128 of this ~~act~~ 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 11. AMENDATORY Section 19, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 2-107), is amended to read as follows:

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

1. To purchase and import into this state spirits and wines from persons authorized to sell same who are the holders of a manufacturer or nonresident seller license, and their agents who are the holders of manufacturer's agent licenses;
2. To purchase spirits and wines from licensed distillers, rectifiers and winemakers in this state;
3. To purchase spirits and wines from licensed wholesalers, to the extent set forth in subsections B and C of this section;
4. To sell in retail containers in this state to retailers, mixed beverage, caterer, special event, public event, hotel beverage or airline/railroad beverage licensees, spirits and wines which have been received and unloaded at the bonded warehouse facilities of the wholesaler before such sale;
5. To sell to licensed wholesalers, to the extent set forth in subsections B and C of this section, spirits and wines which have been received and unloaded at the bonded warehouse facilities of the wholesaler before such sale; and
6. To sell spirits and wines out of this state to qualified persons.

Provided, however, sales of spirits and wine in containers with a capacity of less than one-twentieth (1/20) gallon by a holder of a wholesaler license shall be in full case lots and in the original unbroken case. Wholesalers shall be authorized to place such signs outside their place of business as are required by Acts of Congress and by such laws and regulations promulgated under such Acts.

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

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

1. Maintain not more than three (3) self-owned or leased and self-operated bonded warehouses within this state. All invoices shall be stored at the principal place of business for which the wholesaler license was granted; and

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

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

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

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

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

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

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

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

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

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

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

C. The economic hardship exemption provided for in subsection B of this section shall renew annually, provided that no in-state beer distributor for a particular brewer submits an executed distribution agreement to assume responsibility to distribute the beer in the subject county or counties at least sixty (60) days prior to the renewal date of the exemption. The in-state beer distributor who has executed a distribution agreement to assume responsibility to distribute beer in the subject territory shall compensate the out-of-state distributor the fair market value of the distribution

rights of the territory as determined pursuant to Section ~~78~~ 3-108 of this ~~act~~ title.

D. Provided, nothing in this section shall require an Oklahoma licensed beer distributor with an Oklahoma designated territory on the effective date of this act to meet the hardship provisions in subsections B and C of this section to continue to operate as a licensed Oklahoma beer distributor.

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

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

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

2. Any licensee who is the holder of a mixed beverage/caterer combination license or the holder of a mixed beverage license and a hotel beverage license who is issued a storage license shall store all inventories of alcoholic beverages either on the premises of the mixed beverage establishment or in the warehouse;

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

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

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

SECTION 14. AMENDATORY Section 78, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 3-108), is amended to read as follows:

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

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

1. Enter into a distributor agreement with a licensed distributor, as defined herein, to sell the designated brands, including brand extensions, of the brewer or cider manufacturer. The agreement shall designate the sales territory of that licensed distributor and the designated brands to be sold by the licensed distributor. All such distributor agreements shall specifically authorize this sale of the designated brands by a licensed distributor within that sales territory. All such distributor agreements shall further provide that the licensed manufacturer who desires to sell a brand extension of a low-point beer in Oklahoma must assign the low-point beer brand extension to the licensed distributor to whom the licensed manufacturer granted the exclusive

sales territory to the low-point beer brand from which the brand extension resulted;

2. Sell its registered and approved designated brands only to a licensed distributor with whom that brewer or cider manufacturer has a distributor agreement designating the sales territory of the licensed distributor and the designated brands to be sold by the licensed distributor;

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

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

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

D. 1. No later than ~~sixty (60) days after the effective date of this act~~ August 2, 2018, a brewer shall assign the exclusive right to distribute a beer brand, including brand extensions thereof, to the low-point beer distributor who was, prior to the effective date of this act, assigned the exclusive distribution rights to the low-point beer from which the brand extension arose without charge or payment of compensation, unless the low-point beer distributor is, on the effective date of this act, a brewer of beer or low-point beer and has therefore been distributing low-point beer pursuant to a license to so distribute, subject to the provisions of subsection E of this section. This subsection shall not apply to a small brewer as defined in Section ~~3~~ 1-103 of this ~~act~~ title.

2. With respect to brand extensions which arise after ~~the effective date of this act~~ October 1, 2018, the brewer or cider manufacturer shall assign the exclusive right to distribute the

brand extension to the distributor who has been assigned the exclusive distribution rights to the beer or cider from which the brand extension arose, without charge or payment of compensation.

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

4. No later than ~~sixty (60) days after the effective date of this act~~ August 2, 2018, with respect to dual strength beer, the brewer thereof shall assign the exclusive right to distribute the brands represented by the dual strength beer to either the low-point beer distributor or the nonresident seller who had theretofore been assigned the exclusive distribution rights in the territory to either version of the dual strength beer; provided, however, whichever party is selected by the brewer must compensate the party that was not selected by the brewer for the loss of the distribution rights with respect to that particular territory. Whichever party is selected shall obtain the requisite distributor license and shall be subject to the provisions of this act.

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

- a. the diminished value of the distribution of one version of beer as a consequence of the subsequent introduction of the other version,
- b. the expected annual sales and earnings of the distributor agreement,

- c. the length of time the existing distributor held in the distribution sales agreement, and
- d. any other relevant items of value, such as goodwill and going concern.

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

SECTION 15. AMENDATORY Section 80, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 3-110), is amended to read as follows:

Section 3-110. A. A licensed distributor designated as the licensed distributor for a beer brand within a designated sales territory shall present that beer brand for sale to all on-premise licensees on the same price basis and without discrimination and to all off-premise licensees on the same price basis within a particular county and without discrimination. A licensed distributor shall not sell, supply or deliver, either directly or indirectly through a third party, a beer brand to a licensed retailer outside of the designated sales territory of the designated distributor nor to any person the licensed distributor has reason to believe will sell or supply any quantity of the beer brand to any retail location outside of the designated sales territory of the designated distributor.

B. All beer shall only be transported by a marked conveyance owned or leased by the licensed distributor and operated by the

licensed distributor or an employee of the distributor for the products of a licensed manufacturer within the designated sales territory to the address and location of a licensed retailer within that designated sales territory.

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

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

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

SECTION 16. AMENDATORY Section 81, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 3-111), is amended to read as follows:

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

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

- a. the brewer establishes good cause for such termination,
- b. the beer distributor receives written notification by certified mail, return receipt requested, from the brewer of the alleged noncompliance and is afforded no less than sixty (60) days in which to cure such

noncompliance. If not capable of being cured within the sixty-day period, the beer distributor shall begin the cure within the sixty-day period and diligently pursue the cure as promptly as feasible,

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

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

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

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

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

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

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

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

6. Any attempted transfer of ownership of the beer distributor, stock of the beer distributor or stock of any parent corporation of the beer distributor, or any change in the beneficial ownership or control of any entity having control of the beer distributor, without obtaining the prior written approval of the brewer, which may not be unreasonably withheld, except as may otherwise be permitted pursuant to a written agreement between the parties;

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

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

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

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

D. The brewer shall have the right to terminate an agreement with a beer distributor at any time by giving the beer distributor at least ninety-days' written notice by certified mail, return receipt requested; provided, the brewer shall give a similar notice

to all other beer distributors in all other states who have entered into the same distributor agreement with the brewer.

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

1. The successor brewer shall become obligated to all of the terms and conditions of the agreement in effect on the date of succession. This subsection applies regardless of the character or form of the succession. A successor brewer has the right to contractually require its beer distributor to comply with operational standards of performance, if the standards are uniformly established for all of the successor brewer's distributors. A successor brewer may, upon written notice, terminate its agreement, in whole or in part, with a beer distributor of the brewer it succeeded, for the purpose of transferring the distribution rights in the beer distributor's territory to a new beer distributor, provided that the successor beer distributor first pays to the existing beer distributor the fair market value of the existing distributor's business with respect to the terminated brand or brands;

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

3. a. the successor beer distributor shall negotiate with the existing beer distributor to determine the fair market value of the existing beer distributor's right to distribute in the existing beer distributor's territory. The successor beer distributor and the existing beer distributor shall negotiate the fair market value in good faith, and

- b. the existing beer distributor shall continue to distribute in good faith until payment of the compensation agreed to under subparagraph a of this paragraph, or awarded under paragraph 4 of this subsection, is received; and
4. a. if the successor beer distributor and the existing beer distributor fail to reach a written agreement on the fair market value within thirty (30) days after the existing beer distributor receives the notice required pursuant to paragraph 2 of this subsection, the successor beer distributor or the existing beer distributor shall send a written notice to the other party requesting arbitration pursuant to the Uniform Arbitration Act, Part 2 of Article 22 of Title 13, C.R.S. Arbitration shall be held for the purpose of determining the fair market value of the existing beer distributor's right to distribute in the existing beer distributor territory,
- b. notice of intent to arbitrate shall be sent, as provided in subparagraph a of this paragraph, not later than forty (40) days after the existing beer distributor receives the notice required pursuant to paragraph 2 of this subsection. The arbitration proceeding shall conclude not later than sixty (60) days after the date the notice of intent to arbitrate is mailed to a party, unless this time is extended by mutual agreement of the parties and the arbitrator,
 - c. any arbitration held pursuant to this subsection shall be conducted in a city within this state that:
 - (1) is closest to the existing beer distributor, and
 - (2) has a population of more than twenty thousand (20,000) people,
 - d. any arbitration held pursuant to this paragraph shall be conducted before one impartial arbitrator to be selected by the American Arbitration Association or its successor. The arbitration shall be conducted in

accordance with the rules and procedures of the Uniform Arbitration Act, Part 2 of Article 22 of Title 13, C.R.S.,

- e. an arbitrator's award in any arbitration held pursuant to this paragraph shall be monetary only and shall not enjoin or compel conduct. Any arbitration held pursuant to this paragraph shall be in lieu of all other remedies and procedures,
- f. the cost of the arbitrator and any other direct costs of an arbitration held pursuant to this paragraph shall be equally divided by the parties engaged in the arbitration. All other costs shall be paid by the party incurring them,
- g. the arbitrator in any arbitration held pursuant to this paragraph shall render a written decision not later than thirty (30) days after the conclusion of the arbitration, unless this time is extended by mutual agreement of the parties and the arbitrator. The decision of the arbitrator is final and binding on the parties. The arbitrator's award may be enforced by commencing a civil action in any court of competent jurisdiction. Under no circumstances may the parties appeal the decision of the arbitrator,
- h. an existing beer distributor or successor beer distributor who fails to participate in the arbitration hearings in any arbitration held pursuant to this paragraph waives all rights the existing beer distributor or successor beer distributor would have had in the arbitration and is considered to have consented to the determination of the arbitrator, and
- i. if the existing beer distributor does not receive payment from the successor beer distributor of the settlement or arbitration award required under paragraph 2 or 3 of this subsection within thirty (30) days after the date of the settlement or arbitration award:

- (1) the existing beer distributor shall remain the beer distributor in the existing beer distributor's territory to at least the same extent that the existing beer distributor distributed the beer immediately before the successor brewer acquired rights to the brand, and
- (2) the existing beer distributor is not entitled to the settlement or arbitration award.

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

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

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

4. If the arbitration panel rules that the payment made by the small brewer to the beer distributor upon termination was less than the fair market value of distribution rights lost or diminished by

reason of the termination, then the small brewer must pay the beer distributor the difference between the payment made to the beer distributor and the determined fair market value plus interest.

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

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

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

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

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

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

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

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

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

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

SECTION 17. AMENDATORY Section 86, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 3-116), is amended to read as follows:

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

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

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

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

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

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

2. When a new item is registered, or an old item is discontinued, or any change is made by a manufacturer or nonresident seller as to price, age, proof, label or type of bottle of any item offered for sale in this state, such new item, discontinued item or change in price, age, proof, label or type of bottle of any item shall be listed separately on the cover page of the price schedule and, in the case of prices changed, shall reflect both the old and the new price of the item changed. All new items and changes as to age, proof, label or type of bottle in which any item is offered for sale shall first be submitted in writing to the ABLE Commission for approval under such requirements as it may deem proper. Approval or disapproval of price changes shall not be required if filed in conformity with the provisions of this subsection.

- a. In addition to the foregoing requirements, the manufacturer shall, at the same time, on regular forms provided by the ABLE Commission, re-register all items of alcoholic beverage which the manufacturer had registered and offered for sale in this state during the previous price period.
- b. A short form of price posting may be permitted by the ABLE Commission for any price period in which no new item is offered or old item discontinued, or change is made in the price, age, proof, label or type of bottle of any item offered by any manufacturer. Such short form shall contain only such statements as the Director may require or permit;

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

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

- a. a manufacturer who has posted F.O.B. prices from a foreign shipping point shall also list the same item(s) at an F.O.B. point within the continental United States. Only one United States F.O.B. point shall be permitted, and
- b. a manufacturer may list on their price list or posting an item of specific size that may be packaged in more than one type or design container, provided that the containers being offered have been approved by the ABLE Commission;

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

6. A full and correct copy of each said price registration shall be transmitted to wine and spirits wholesalers on the same day

such prices are filed with or mailed to the ABLE Commission. Proof of such mailing or delivery shall be furnished the ABLE Commission by the manufacturer with the price registration or upon request;

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

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

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-116.1 of Title 37A, unless there is created a duplication in numbering, reads as follows:

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

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

2. The proposed markups shall be computed by percentage in the four categories: Spirits, Cordials and Specialties, Wines-Domestic and Wines-Imported. In reporting to the ABLE Commission, the proposed markups shall be set forth in the following categories and order:

- a. Category 1 - Spirits: Straights, Blends, Bonds, Corn, Rye, Scotch, Canadian, Irish, Vodka, Gin, Rum, Brandy Alcohol and Tequila,

- b. Category 2 - Cordials and Specialties: Cocktails, Cordials, Domestic and Imported and Miscellaneous Specialties,
- c. Category 3 - Wines-Domestic: Vermouth American, Fortified American, Light American and Champagne American, and
- d. Category 4 - Wines-Imported: Vermouth Imported, Fortified Imported, Light French, Light German, Light Other Imported and Champagne Imported;

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

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

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

6. After filing the report required by this subsection, any and all wine and spirits wholesalers shall be permitted to register on or before the twenty-fifth day of each posting month an adjusted price. The adjusted price means percentage or individual item prices reported and registered by a wine and spirits wholesaler on or before the twenty-fifth day of the posting month in response to a lower percentage reported and registered by a competitor on the fifteenth day of the month. The adjusted price shall be no lower

than the lowest percentage posted on the fifteenth day of said month by any wine and spirits wholesaler;

7. The adjusted price posted by a wine and spirits wholesaler in response to the lowest percentage posted by any wine and spirits wholesaler may, but need not be, posted in terms of a percentage and, if not so stated, shall state the price at which the wine and spirits wholesaler proposes to sell each individual item or size of item which he proposes to offer for sale during the posting period. The price postings, except for unmodified percentage markups, shall describe each item by brand, size, age, type and proof. Wines and champagnes shall reflect the alcoholic contents thereof;

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

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

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

11. A wine and spirits wholesaler may include a minimum order charge of no less than One Dollar (\$1.00) for any order of alcoholic beverages to a retail, mixed beverage, caterer or special event licensee that does not exceed the amount that such wholesaler

designates as a minimum order in his proposed price posting. The minimum charge, if it is more than One Dollar (\$1.00), and the amount of the minimum order shall be included in the price posting;

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

13. A price posting on a new item not previously stocked by a wine and spirits wholesaler shall be filed with the ABLE Commission prior to offering for sale, but no such item shall be listed at a lower price than is then, or will be, in effect during the price period for which the new item is filed, and within the percentage in the proper category of said wine and spirits wholesaler. In the event of a new item posting, mailings to wine and spirits wholesalers and those licensed to purchase wine and spirits in the state, as herein required, shall be sent on the same date as the postings;

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

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

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

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

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-116.2 of Title 37A, unless there is created a duplication in numbering, reads as follows:

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

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

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

A. On the first business day of every month, every wine and spirits wholesaler shall electronically publish and distribute its price catalog to the ABLE Commission, to all licensees who have purchased alcoholic beverages from the wine and spirits wholesaler within the past sixty (60) days, and to any on-premises or off-premises licensee who requests an electronic copy of the same. Every price catalog shall contain the sales price of every item offered for sale by brand name, size, proof and type of alcoholic beverage, as well as any transportation, handling and other charges to be assessed for the delivery of the products. In addition, every price catalog shall contain the effective date of the price catalog,

as well as the name, physical address, office phone number and facsimile number of the wine and spirits wholesaler.

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

SECTION 21. AMENDATORY Section 101, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 4-104), is amended to read as follows:

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

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

SECTION 22. AMENDATORY Section 102, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 4-105), is amended to read as follows:

Section 4-105. Counties are hereby authorized to levy an annual occupational tax for the privilege of operating as a mixed beverage, beer and wine, caterer, public event or special event licensee or as a bottle club, within their respective jurisdictions and not located in a municipality levying an occupation tax as provided by Section ~~4-104~~ 4-104 of this act ~~at~~ title, not to exceed the state license fee for such licensees; provided, the tax shall be levied only by the county in which such licensee has its principal place of business. All revenues derived from any such annual occupational tax shall be deposited in the general revenue fund of the county. This section shall not give any county any right to determine or regulate the issuance of any license, except as specifically provided for in this section, as the ABLE Commission shall have exclusive authority as to issuance and regulations of licenses. No county may prescribe rules or regulations in conflict with or in addition to the statutes of this state or the rules of the ABLE Commission. No licensee shall be held liable for engaging in business otherwise authorized under this act with any other mixed beverage, beer and wine, caterer, public event or special event licensee or bottle club solely because such other party has failed to pay any occupational tax due under this section.

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

SECTION 23. AMENDATORY Section 135, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 5-132), is amended to read as follows:

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

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

C. The application for registration of a brand label shall be filed on a form prescribed by the ABLE Commission, and shall contain such information as the ABLE Commission shall require. Such application shall be accompanied by a certified check, bank officers' check or draft or money order in the amount of the annual registration fee, or the properly prorated portion thereof prescribed by this section.

D. 1. The annual fee for registration of any brand label for spirits shall be Three Hundred Seventy-five Dollars (\$375.00). The annual fee for registration of any brand label for beer shall be Two

Hundred Dollars (\$200.00). The annual fee for registration of any brand label for wine made in the United States, or for registration of any category of imported wine as defined by the Tax Commission, shall be Two Hundred Dollars (\$200.00). Beer manufactured in this state shall be exempt from brand label registration fees.

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

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

F. The ABLE Commission may at any time exempt any discontinued brand from fee provisions of this section where a manufacturer or wholesaler has an inventory of one hundred cases or less of liquor or wine and five hundred cases or less of beer, and certifies to the ABLE Commission in writing that such brand is being discontinued.

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

SECTION 24. AMENDATORY Section 144, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2016, Section 6-104), is amended to read as follows:

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

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

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

SECTION 25. REPEALER 37 O.S. 2011, Section 163.11, as last amended by Section 1 of this act, is hereby repealed.

SECTION 26. REPEALER 37 O.S. 2011, Section 163.18G, as amended by Section 2 of this act, is hereby repealed.

SECTION 27. REPEALER 37 O.S. 2011, Section 163.18H, as amended by Section 3 of this act, is hereby repealed.

SECTION 28. REPEALER 37 O.S. 2011, Section 163.20, as amended by Section 4 of this act, is hereby repealed.

SECTION 29. REPEALER 37 O.S. 2011, Section 521, as last amended by Section 5 of this act, is hereby repealed.

SECTION 30. REPEALER 37 O.S. 2011, Section 554.1, as last amended by Section 6 of this act, is hereby repealed.

SECTION 31. REPEALER 37 O.S. 2011, Section 554.2, as last amended by Section 7 of this act, is hereby repealed.

SECTION 32. REPEALER Section 1 of Enrolled House Bill No. 1540 of the 1st Session of the 56th Oklahoma Legislature, is hereby repealed.

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

Passed the Senate the 25th day of May, 2017.

Anthony Syta
Presiding Officer of the Senate

Passed the House of Representatives the 25th day of May, 2017.

[Signature]
Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 25th

day of May, 20 17, at 6:17 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 31st

day of May, 20 17, at 11:08 o'clock A M.

Mary Fallin
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 31st

day of May, 20 17, at 12:45 o'clock P M.

By: [Signature]