

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 2291

By: Wright

4  
5  
6 AS INTRODUCED

7 An Act relating to alcoholic beverages; amending  
8 Section 3, Chapter 366, O.S.L. 2016, as last amended  
9 by Section 13, Chapter 304, O.S.L. 2018, 4, 5, 7, 8,  
10 9, 10 and 11, Chapter 366, O.S.L. 2016 (37A O.S.  
11 Supp. 2018, Sections 1-103, 1-104, 1-105, 1-107, 1-  
12 108, 1-109, 1-110 and 1-111), which relate to the  
13 Alcoholic Beverage Laws Enforcement Commission;  
14 modifying definition; abolishing Commission;  
15 establishing an executive agency; providing  
16 reference; authorizing Governor to appoint Alcoholic  
17 Beverage Laws Enforcement Director; modifying powers  
18 and duties of Director; marking delegable certain  
19 powers and duties of Director; clarifying language;  
20 and providing an effective date.

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

22 SECTION 1. AMENDATORY Section 3, Chapter 366, O.S.L.  
23 2016, as last amended by Section 13, Chapter 304, O.S.L. 2018 (37A  
24 O.S. Supp. 2018, 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 executive agency  
known as the Alcoholic Beverage Laws Enforcement Commission;

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

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

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

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

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

24

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

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

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

15       10. "Brand extension" means:

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

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

22               (2) relies to a significant extent on the goodwill  
23 associated with the preexisting brand, or  
24

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

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

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

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

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

23           13.   "Cider" means any alcoholic beverage obtained by the  
24           alcoholic fermentation of fruit juice, including but not limited to

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

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

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

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

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

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

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

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

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

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

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

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

21 22. "Good cause" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           b.     controlled at all times by the licensee;

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

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

17           35.    "Motion picture theater" means an establishment which is  
18 licensed by Section 2-110 of this title to sell alcoholic beverages  
19 by the individual drink and where motion pictures are exhibited, and  
20 to which the general public is admitted;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23

24

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

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

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

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

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

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

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

1 The term "wholesaler", as used in this act, shall be construed to  
2 refer to a wine and spirits wholesaler; and

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

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

13 SECTION 2. AMENDATORY Section 4, Chapter 366, O.S.L.  
14 2016, as last amended by Section 1, Chapter 312, O.S.L. 2018 (37A  
15 O.S. Supp. 2018, Section 1-104), is amended to read as follows:

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

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

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

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

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

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

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

22 There is hereby established an executive agency known as the  
23 Alcoholic Beverage Laws Enforcement Commission which is under the  
24 direction of the Alcoholic Beverage Laws Enforcement Director. Any

1 reference in the Oklahoma Statutes to the Alcoholic Beverage Laws  
2 Enforcement Commission created in Section 1 of Article XXVIII of the  
3 Oklahoma Constitution shall be deemed a reference to the executive  
4 agency established by this subsection, or the Director, as required  
5 by the context of the reference.

6 G. The ~~Commission~~ Governor shall appoint a the Director, whose  
7 duties shall be defined as provided in Section 1-107 and 1-108 of  
8 this title.

9 H. B. The State of Oklahoma shall take all necessary steps to  
10 ensure the timely implementation of Enrolled Senate Joint Resolution  
11 No. 68 of the 2nd Session of the 55th Oklahoma Legislature, if  
12 approved by the voters. Consistent with this objective, the ABLE  
13 ~~Commission~~ Director shall have the power to issue interim licenses  
14 prior to October 1, 2018, as follows:

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

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

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

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

- 22           a. such sales may begin no sooner than September 1, 2018,
- 23           b. the beer distributor either must be assigned a beer  
24           distributor territory by the manufacturer pursuant to

1 a distributor agreement to begin October 1, 2018, or  
2 be a brewer or an affiliate of a brewer that will be  
3 permitted to distribute beer within two territories  
4 pursuant to the provisions of subsection E of Section  
5 3-108 of this title, and

6 c. the interim license only permits sales to retailers by  
7 the interim licensee either in the distribution  
8 territory as set forth in the distributor agreement or  
9 in the two territories permitted pursuant to the  
10 provisions of subsection E of Section 3-108 of this  
11 title.

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

18 SECTION 3. AMENDATORY Section 5, Chapter 366, O.S.L.  
19 2016 (37A O.S. Supp. 2018, Section 1-105), is amended to read as  
20 follows:

21 Section 1-105. A. ~~Members of the~~ The ABLE ~~Commission~~ Director  
22 shall:

- 23 1. Be ~~citizens~~ a citizen of the United States;
- 24 2. Be a qualified ~~electors~~ elector in this state;

1           3. Have been ~~residents~~ a resident of this state for at least  
2 ten (10) consecutive years immediately preceding the date of ~~their~~  
3 his or her appointment and qualification; and

4           4. Be ~~persons~~ a person of outstanding character, experienced,  
5 efficient and successful in business affairs and of good reputation  
6 in ~~their communities~~ his or her community.

7           B. ~~Members~~ The ABLE Director shall execute the loyalty oath  
8 required by law for elected state officials before assuming the  
9 duties of ~~their~~ his or her office.

10          C. No person shall be appointed who:

11           1. Has been convicted of, or shall have pleaded guilty to, a  
12 felony or any violation of any federal or state law concerning the  
13 manufacture or sale of alcoholic beverages or cereal malt beverages  
14 prior or subsequent to the passage of the Oklahoma Alcoholic  
15 Beverage Control Act;

16           2. Has paid a fine or penalty in settlement in any prosecution  
17 against the person in any violation of such laws; or

18           3. Shall have forfeited a bond to appear in court to answer  
19 charges for any such violation.

20          D. No appointee shall serve if the appointee or any person  
21 related to the appointee in the third degree by consanguinity or  
22 affinity is an officer, director, employee or stockholder in any  
23 corporation or partnership which has as its business the  
24 manufacture, sale or distribution of an alcoholic beverage.

1 E. ~~No member of the~~ The ABLE Commission Director shall not own,  
2 mortgage or lease any retail or wholesale store or warehouse, any  
3 establishment selling alcoholic beverages by the individual drink  
4 for on-premises consumption, any establishment operated by a caterer  
5 who provides alcoholic beverages by the individual drink pursuant to  
6 a caterer's license or any bottle club as provided in the alcoholic  
7 beverage control laws of this state.

8 F. The provisions of the Oklahoma Alcoholic Beverage Control  
9 Act shall not prevent ~~any member of the~~ ABLE Commission Director  
10 from purchasing and possessing, for personal use or use by the  
11 members of the ~~member's~~ ABLE Director's family or any guests, any  
12 alcoholic beverage which may be purchased or kept by any person by  
13 virtue of the provisions of the Oklahoma Alcoholic Beverage Control  
14 Act.

15 G. In order to establish the qualifications of ~~members of the~~  
16 ABLE Commission Director, a national criminal history record check  
17 as defined in Section 150.9 of Title 74 of the Oklahoma Statutes  
18 shall be required for ~~each member~~ the ABLE Director.

19 H. ~~A majority of the members of the ABLE Commission shall~~  
20 ~~constitute a quorum to transact business, but no vacancy shall~~  
21 ~~impair the right of the remaining members to exercise all of the~~  
22 ~~powers of the Commission, and every act of a majority of the members~~  
23 ~~shall be deemed to be the act of the ABLE Commission.~~ The ABLE  
24 ~~Commission shall appoint the Director as secretary who shall keep a~~

1 record of all his or her proceedings and official acts ~~of the~~  
2 ~~Commission~~ and ~~who~~ shall be the custodian of all records and perform  
3 such other duties as ~~the ABLE Commission shall prescribe~~ are  
4 required.

5 I. ~~Each member of the~~ The ABLE Commission Director shall  
6 receive reimbursement for travel expenses incurred in attending  
7 meetings as provided for in the State Travel Reimbursement Act.

8 J. The office of the ABLE Commission shall be in Oklahoma City  
9 in office space provided by the Office of Management and Enterprise  
10 Services. All meetings of the ABLE Commission shall be open to the  
11 public and all records of the ABLE Commission shall be public  
12 records and open for public inspection. The ~~ABLE Commission~~  
13 Director shall hold regular meetings at least once a month at ~~its~~  
14 his or her office and may hold such special meetings as ~~it~~ he or she  
15 deems necessary at any time and at any place within the state.

16 K. The ABLE Commission, for authentication of its records,  
17 process and proceedings, may adopt, keep and use a common seal, of  
18 which seal judicial notice shall be taken in all the courts of the  
19 state. Any process, notice or other paper which the ~~ABLE Commission~~  
20 Director may be authorized by law to issue shall be deemed  
21 sufficient if signed by ~~the secretary of the ABLE Commission~~  
22 Director and authenticated by such seal. All acts, orders,  
23 proceedings, rules, regulations, entries, minutes and other records  
24 of the ABLE Commission, and all reports and documents filed with the

1 ABLE Commission may be proved in any court of this state by copy  
2 thereof certified by ~~the secretary of the ABLE Commission~~ Director  
3 with the seal of the ABLE Commission attached.

4 L. ~~The~~ Neither the ABLE Commission nor the ABLE Director shall  
5 ~~not~~ adopt or promulgate any rule or regulation inconsistent with the  
6 provisions of the Oklahoma Alcoholic Beverage Control Act or any law  
7 of this state.

8 SECTION 4. AMENDATORY Section 7, Chapter 366, O.S.L.  
9 2016 (37A O.S. Supp. 2018, Section 1-107), is amended to read as  
10 follows:

11 Section 1-107. A. The ABLE ~~Commission~~ Director shall have the  
12 following powers and duties:

13 1. To supervise, inspect and regulate every phase of the  
14 business of manufacturing, importing, exporting, transporting,  
15 storing, selling, distributing and possessing for the purpose of  
16 sale, all alcoholic beverages which shall be necessary and proper to  
17 carry out the purposes of the Oklahoma Alcoholic Beverage Control  
18 Act;

19 2. To promulgate rules, in the manner herein provided, to carry  
20 out the purposes of the Oklahoma Alcoholic Beverage Control Act;

21 3. To have the sole authority to issue any license provided for  
22 in the Oklahoma Alcoholic Beverage Control Act and except as  
23 provided in Sections ~~101~~ 4-104 and ~~102~~ 4-105 of this ~~act~~ title with  
24 respect to cities, towns and counties, and except as may be provided

1 under Title 68 of the Oklahoma Statutes with respect to the Oklahoma  
2 Tax Commission, no other agency, instrumentality or political  
3 subdivision of this state shall be authorized to issue any license  
4 or permit allowing any licensee to engage in any activity covered by  
5 the Oklahoma Alcoholic Beverage Control Act anywhere within the  
6 State of Oklahoma;

7 4. To refuse to issue any license provided for in the Oklahoma  
8 Alcoholic Beverage Control Act for cause provided for in the  
9 Oklahoma Alcoholic Beverage Control Act;

10 5. To revoke or suspend, for cause after hearing, any license  
11 issued under the authority of the Oklahoma Alcoholic Beverage  
12 Control Act;

13 6. To prescribe the forms of all reports which it deems  
14 necessary in administering the Oklahoma Alcoholic Beverage Control  
15 Act;

16 7. To fix standards not in conflict with those prescribed by  
17 any law of this state or of the United States, to secure the use of  
18 proper ingredients and methods of manufacture and dispensing of  
19 alcoholic beverages;

20 8. To make seizures of alcoholic beverages manufactured, sold,  
21 possessed, imported or transported in violation of the Oklahoma  
22 Alcoholic Beverage Control Act, and apply for the confiscation  
23 thereof whenever required by the Oklahoma Alcoholic Beverage Control  
24

1 Act, and cooperate in the prosecution of offenders before any court  
2 of competent jurisdiction;

3 9. To submit to the Governor and members of the State  
4 Legislature annual or semiannual reports upon request of the  
5 Governor;

6 10. To inspect or cause to be inspected any premises where  
7 alcoholic beverages are manufactured, stored, distributed, sold,  
8 dispensed or served;

9 11. In the conduct of any hearing authorized to be held by the  
10 ~~ABLE Commission~~ Director:

11 a. to examine or cause to be examined, under oath, any  
12 person,

13 b. to examine or cause to be examined books and records  
14 of any licensee,

15 c. to hear testimony and take proof material for the ABLE  
16 ~~Commission's~~ Director's information and the discharge  
17 of ~~its~~ his or her duties hereunder,

18 d. to administer or cause to be administered oaths, and

19 e. to issue subpoenas for the attendance of witnesses and  
20 the production of books or records which shall be  
21 effective in any part of the state. Any district  
22 court or any judge thereof, either in term or  
23 vacation, may by order duly entered require the  
24 attendance of witnesses and the production of relevant

1 books or records subpoenaed by the ABLE ~~Commission~~  
2 Director, and the court or judge may compel obedience  
3 to the order by proceedings for contempt;

4 12. To prescribe the kind and size of retail containers of  
5 alcoholic beverages which may be purchased, possessed and sold by a  
6 licensee;

7 13. To prescribe by rule, in addition to those herein required,  
8 the kinds of records to be kept and reports to be rendered by  
9 licensees, and the information to be shown therein; provided, that  
10 the period for which all such records and reports be retained shall  
11 not be less than five (5) years;

12 14. To gather, compile and print such statistical data as may  
13 in the opinion of the ABLE ~~Commission~~ Director be needed or useful,  
14 and prescribe charges or fees to be collected from any person or  
15 company to whom such data shall be provided. No reports shall  
16 contain sales information by name or license number;

17 15. To educate persons employed by licensees to sell or serve  
18 alcoholic beverages as to the provisions of Article ~~XXVIII~~ XXVIII-A  
19 of the Oklahoma Constitution and the Oklahoma Alcoholic Beverage  
20 Control Act, with emphasis on recognizing and preventing  
21 intoxication and particular emphasis on those provisions prohibiting  
22 the selling or serving of alcoholic beverages to minors. The ABLE  
23 ~~Commission~~ Director may contract with one or more entities,  
24 including but not limited to the Oklahoma Department of Mental

1 Health and Substance Abuse Services, to perform the duties specified  
2 in this paragraph;

3 16. To purchase motor vehicles necessary for use in ~~its~~ his or  
4 her operations. Such motor vehicles shall not be required to have  
5 any type of identifying marking thereon;

6 17. To purchase insurance on the motor vehicles owned and  
7 operated by the ABLE Commission in accordance with statutory  
8 provisions, subject to the approval of the Risk Management  
9 Administrator as provided for in Section 85.58A of Title 74 of the  
10 Oklahoma Statutes;

11 18. To approve or reject any official bond required to be filed  
12 with the ABLE Commission; and

13 19. To exercise all other powers and duties conferred by the  
14 Oklahoma Alcoholic Beverage Control Act, and all powers incidental,  
15 convenient or necessary to enable it to administer or carry out any  
16 of the provisions of the Oklahoma Alcoholic Beverage Control Act.

17 B. The ABLE Commission shall promulgate rules, pursuant to the  
18 Administrative Procedures Act, to carry out the purposes of the  
19 Oklahoma Alcoholic Beverage Control Act.

20 SECTION 5. AMENDATORY Section 8, Chapter 366, O.S.L.  
21 2016 (37A O.S. Supp. 2018, Section 1-108), is amended to read as  
22 follows:

23 Section 1-108. ~~A.~~ The ABLE ~~Commission~~ Director shall appoint a  
24 an Assistant Director, who ~~shall~~ may employ ~~an Assistant Director~~

1 ~~and~~ such other personnel as are necessary to properly enforce and  
2 administer the Oklahoma Alcoholic Beverage Control Act. The  
3 ~~Director shall require bonds in such instances and amounts as the~~  
4 ~~ABLE Commission may direct, and shall be in direct charge of all~~  
5 ~~records.~~ The ABLE Director shall further have the following  
6 delegable list of specific powers and duties:

7 1. ~~To issue licenses provided for in the Oklahoma Alcoholic~~  
8 ~~Beverage Control Act, and to approve or reject any official bond~~  
9 ~~required to be filed with the Director or the ABLE Commission;~~

10 2. To appoint and employ, supervise and discharge such  
11 employees as may be determined necessary for the proper discharge of  
12 the duties of the ~~office of~~ ABLE Director, upon duties and salary  
13 fixed and determined by the ABLE ~~Commission~~ Director and subject to  
14 all the rules that may be promulgated by the ABLE ~~Commission~~  
15 Director. The ABLE Director ~~and the ABLE Commission~~, in appointing  
16 and employing personnel, shall give preference to honorably  
17 discharged members of the Armed Forces of the United States;

18 3. 2. To conduct such investigations and make such reports as  
19 may be necessary to ~~keep the ABLE Commission advised concerning~~ be  
20 informed of any violations of the provisions of the Oklahoma  
21 Alcoholic Beverage Control Act and make orders for its enforcement;

22 4. ~~To make recommendations to the ABLE Commission concerning~~  
23 ~~the suspension or revocation of any licenses, the levying of fines~~  
24 ~~against licensees for violations of the provisions of the Oklahoma~~

1 ~~Alcoholic Beverage Control Act or rules of the ABLE Commission or~~  
2 ~~any action that should be filed or commenced against any official~~  
3 ~~bond theretofore approved by the Director or the ABLE Commission;~~

4 ~~5. To regularly inspect all places of business of licensees,~~  
5 ~~and all other persons, firms or corporations dealing in the~~  
6 ~~manufacture, distribution, transportation, sale or service of~~  
7 ~~alcoholic beverages under the provisions of the Oklahoma Alcoholic~~  
8 ~~Beverage Control Act and report to the ABLE Commission concerning~~  
9 ~~any and all violations with a recommendation to the ABLE Commission~~  
10 ~~for its determination;~~

11 ~~6.~~ 3. To refer any evidence of a violation of any provision of  
12 the Oklahoma Alcoholic Beverage Control Act which carries a criminal  
13 penalty to the appropriate law enforcement authority for action;

14 ~~7.~~ 4. To aid the enforcement authorities of this state or any  
15 county or municipality of the state, or the federal government, in  
16 prosecutions of violations of the Oklahoma Alcoholic Beverage  
17 Control Act; and

18 ~~8.~~ 5. To enforce the provisions of the Prevention of Youth  
19 Access to Tobacco Act including but not limited to the levying of  
20 administrative fines against persons violating the provisions of the  
21 Prevention of Youth Access to Tobacco Act, and to at least annually  
22 conduct random unannounced inspections at locations where tobacco  
23 products are sold or distributed and conduct targeted inspections at

24

1 those locations which have been in violation of the provisions of  
2 the Prevention of Youth Access to Tobacco Act;

3 ~~B. The Director may~~

4 6. To maintain all records of his or her office and of the  
5 executive agency established by this act; and

6 7. To employ or contract with attorneys, as needed, to advise  
7 the ABLE Director and the ABLE Commission on all legal matters and  
8 shall appear for and represent the ABLE Director and the ABLE  
9 Commission in all administrative hearings and all litigation or  
10 other proceedings which may arise in the discharge of their duties.

11 At the request of the ABLE ~~Commission~~ Director, such attorneys shall  
12 assist district attorneys in prosecuting charges of violators of the  
13 Oklahoma Alcoholic Beverage Control Act.

14 SECTION 6. AMENDATORY Section 9, Chapter 366, O.S.L.  
15 2016 (37A O.S. Supp. 2018, Section 1-109), is amended to read as  
16 follows:

17 Section 1-109. A. ~~The members of the ABLE Commission, the~~  
18 ~~Director and such agents and inspectors as the ABLE Commission~~  
19 Director appoints in writing shall have all the powers and authority  
20 of peace officers of this state for the purpose of enforcing the  
21 provisions of the Oklahoma Alcoholic Beverage Control Act.

22 B. The ABLE Director or any agent or inspector duly appointed,  
23 as provided in subsection A of this section, shall be authorized to  
24 arrest violators for offenses against laws of this state committed

1 in the presence of the Director or such agents or inspectors, and  
2 further, upon the request of a sheriff or another peace officer of  
3 this state or any political subdivision thereof, assist in  
4 apprehension and arrest of a violator or suspected violator of any  
5 of the laws of this state.

6 C. 1. A commissioned employee of the ABLE Commission shall be  
7 entitled to receive, upon retirement by reason of length of service,  
8 the continued custody and possession of the sidearm and badge  
9 carried by such employee immediately prior to retirement;

10 2. A commissioned employee of the ABLE Commission may be  
11 entitled to receive, upon retirement by reason of disability, the  
12 continued custody and possession of the sidearm and badge carried by  
13 such employee immediately prior to retirement, upon approval of the  
14 Director;

15 3. Custody and possession of the sidearm and badge of a  
16 commissioned employee of the ABLE Commission, killed in the line of  
17 duty, may be awarded by the ABLE Director to the spouse or next of  
18 kin of the deceased employee.

19 SECTION 7. AMENDATORY Section 10, Chapter 366, O.S.L.  
20 2016 (37A O.S. Supp. 2018, Section 1-110), is amended to read as  
21 follows:

22 Section 1-110. A. ~~No member or~~ Neither the ABLE Director nor  
23 any employee of the ABLE Commission shall:

24

1 1. Be appointed or serve who has been convicted of a felony or  
2 of any violation of any federal or state law relating to alcoholic  
3 beverages;

4 2. Directly or indirectly, individually or as a member of a  
5 partnership, or as a shareholder of a corporation, have any interest  
6 whatsoever in the manufacture, sale or distribution of alcoholic  
7 beverages;

8 3. Receive any compensation or profit therefrom, nor have any  
9 interest, directly or indirectly, in any business authorized by a  
10 license issued pursuant to the provisions of the Oklahoma Alcoholic  
11 Beverage Control Act. The holding of membership or elective or  
12 appointed office in fraternal organizations which obtain licenses  
13 authorized by the Oklahoma Alcoholic Beverage Control Act shall not  
14 be considered to be engagement in the alcoholic beverage business;

15 4. Solicit or accept any gift, gratuity, emolument or  
16 employment from any person subject to the provisions of the Oklahoma  
17 Alcoholic Beverage Control Act, or from any officer, agent or  
18 employee thereof;

19 5. Solicit, request from or recommend, directly or indirectly,  
20 to any such person or to any officer, agent or employee thereof, the  
21 appointment of any person to any place or position, and every such  
22 person, and every officer, agent or employee thereof, is hereby  
23 forbidden to offer to ~~any member~~ the ABLE Director or employee of  
24 the ABLE Commission any gift, gratuity, emolument or employment;

1       6. Accept employment within the alcoholic beverage industry for  
2 any holder of a license issued pursuant to the provisions of the  
3 Oklahoma Alcoholic Beverage Control Act; or

4       7. Represent, directly or indirectly, any such licensee in any  
5 proceedings before the ABLE Director, ~~the ABLE Commission~~ or the Tax  
6 Commission within two (2) years following ~~separation from~~ the end of  
7 his or her appointment as ABLE Director or employment with the ABLE  
8 Commission.

9       B. Violation of any provision of subsection A of this section  
10 shall constitute a misdemeanor. In addition to the penal  
11 provisions, any person convicted shall be immediately removed from  
12 the office or position he or she holds.

13       C. No license of any kind shall be granted to or retained by  
14 any person or any partnership containing any partner who is related  
15 to ~~any member~~ the ABLE Director or employee of the ABLE Commission  
16 by affinity or consanguinity within the third degree. If a license  
17 is held in violation of the provisions of this subsection, the  
18 ~~member~~ ABLE Director or employee of the ABLE Commission shall not be  
19 entitled to receive any compensation or other monies from the State  
20 of Oklahoma while a license is held in violation of the provisions  
21 of this subsection.

22       D. It shall be unlawful for any member or employee of the ABLE  
23 Commission to lend, expend or contribute any money, funds, property  
24 or other thing of value, or use his or her official position for the

1 purpose of securing the nomination or election or the defeat of any  
2 candidate for public office in the State of Oklahoma.

3 E. Any person who shall violate the provisions of subsection D  
4 of this section shall, upon conviction, be fined not less than Two  
5 Thousand Five Hundred Dollars (\$2,500.00) nor more than Five  
6 Thousand Dollars (\$5,000.00), or be imprisoned in the county jail  
7 for not more than one (1) year, or by both such fine and  
8 imprisonment. Any person found guilty of violating the provisions  
9 of this subsection shall, upon conviction, in addition to the  
10 criminal penalty imposed herein, be discharged from the office or  
11 position he or she holds and shall not be rehired to any state  
12 position.

13 SECTION 8. AMENDATORY Section 11, Chapter 366, O.S.L.  
14 2016 (37A O.S. Supp. 2018, Section 1-111), is amended to read as  
15 follows:

16 Section 1-111. A. Employees of the State of Oklahoma and its  
17 political subdivisions are hereby permitted to obtain licenses from  
18 the ABLE ~~Commission~~ Director and to be involved in the alcoholic  
19 beverage business unless such involvement and licensing is  
20 prohibited by law.

21 B. The following officers and employees of the State of  
22 Oklahoma and its political subdivisions are hereby prohibited from  
23 engaging in the alcoholic beverage business:

24

1 1. All judges, district attorneys, assistant district attorneys  
2 and any public official who sits in a judicial capacity with  
3 jurisdiction over the Oklahoma Alcoholic Beverage Control Act;

4 2. All employees certified as peace officers engaging in law  
5 enforcement activities; and

6 3. All employees of the Oklahoma Tax Commission who engage in  
7 the auditing, enforcement and collection of alcoholic beverage  
8 taxes.

9 C. The holding of membership or elective or appointed office in  
10 fraternal organizations which obtain mixed beverage or bottle club  
11 licenses by employees of the state or a political subdivision shall  
12 not be considered to be engagement in the alcoholic beverage  
13 business.

14 D. If the voters of a county in which a state lodge is located  
15 approve sale of alcoholic beverages by the individual drink for on-  
16 premises consumption, then such sale of alcoholic beverages on the  
17 premises of such lodge shall be authorized if a license for such  
18 sale, issued pursuant to the provisions of the Oklahoma Alcoholic  
19 Beverage Control Act, is obtained. Provided, further, that a bottle  
20 club may be licensed on the premises of a state lodge located in a  
21 county where sale of alcoholic beverages by the individual drink for  
22 on-premises consumption is not authorized.

23 E. The provisions of subsection D of this section shall not  
24 prohibit the state or a political subdivision of the state from

1 leasing a public building or facility to a person who obtains a  
2 mixed beverage license, bottle club license, special event license,  
3 contracts for the services of a licensed caterer or subleases the  
4 building or facility to a person who obtains a mixed beverage  
5 license, bottle club license, special event license or contracts for  
6 the services of a licensed caterer.

7 F. Provided, that nothing in this section shall prohibit the  
8 sale of alcoholic beverage legally confiscated as provided by law.

9 SECTION 9. This act shall become effective November 1, 2019.

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