

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

SENATE BILL 1727

By: Bergstrom

AS INTRODUCED

An Act relating to alcoholic beverages; providing definitions; creating Alcoholic Beverage Regulatory Business Program; requiring the Alcoholic Beverage Law Enforcement Commission to administer program; providing for consultations between an applicant and Commission; requiring an applicant to submit applications; providing for contents of application; requiring Commission to review applications; providing factors for Commission to consider during review; providing for acceptance or denial of application by the Commission; allowing for the Commission's discretion on denial of applications; providing for reasons of denial; allowing for approved applicants to demonstrate offering in a twelve-month time frame; providing for conditions of an offering by a participant of the program; providing for the suspension of law or rules necessary for participant to demonstrate offering; prohibiting immunity from criminal offenses by participant; allowing regulatory relief office to end participant's participation under certain conditions; requiring participant to provide disclosure before demonstration to consumer; providing contents of disclosure; allowing for participant to extend demonstration period at end of twelve-month period; requiring participant to retain all records, documents, and data produced during the program; allowing for the Commission to request records, documents, and data from participant; allowing for Commission to dismiss participant for failure to comply; requiring participant to compile report for Commission following the end of program participation; providing for contents of report; providing for promulgation of rules; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8-101 of Title 37A, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Alcoholic beverage product or services" means an alcoholic beverage product or service that requires licensure, registration, or other authorization as regulated by state law or rule, including an alcoholic beverage specific product or alcoholic beverage service that includes a business model, delivery mechanism, or element that requires a license, registration, or other authorization to do an alcoholic beverage specific business, as an alcoholic beverage producer or consultant;

2. "Applicant" means an individual or entity that is applying to participate in the alcoholic beverage specific regulatory business program;

3. "Commission" means the Alcoholic Beverage Law Enforcement Commission;

4. "Consumer" means a person that purchases or otherwise enters into a transaction agreement to receive an innovative alcoholic beverage specific product or service that is being tested by an alcoholic beverage specific regulatory business program;

1 5. "Innovation" means the use or incorporation of a new or
2 emerging technology or a new use of existing technology, including
3 blockchain technology, to address a problem, provide a benefit, or
4 otherwise offer a product, service, business model, or delivery
5 mechanism that is not known by the Commission to have a comparable
6 widespread offering in this state.

7 6. "Innovative product or service" means an alcoholic beverage
8 product or service that includes an innovation;

9 7. "Participant" means a person whose application to
10 participate in the alcoholic beverage regulatory program is approved
11 in accordance with the provisions of this act;

12 8. "Program" means the Alcoholic Beverage Regulatory Business
13 Program created in this act, which allows a person to temporarily
14 test an innovative alcoholic beverage product or service on a
15 limited basis without otherwise being licensed or authorized to act
16 under the laws of this state; and

17 9. "Test" means to provide an innovative alcoholic beverage
18 product or services in accordance with the provisions of this act.

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 8-102 of Title 37A, unless there
21 is created a duplication in numbering, reads as follows:

22 A. The Alcoholic Beverages Law Enforcement Commission shall
23 create the Alcoholic Beverage Regulatory Business Program.

24 B. In administering the program, the Commission:

1 1. Shall Establish a program to enable a person to obtain
2 limited access to the market in the state to test an innovative
3 alcoholic beverage product or service without obtaining a license or
4 other authorization that might otherwise be required;

5 2. May enter into agreements with or follow the practices of
6 the Consumer Financial Protection Bureau or other states that are
7 administering similar programs; and

8 3. May not approve participation in the program by an applicant
9 or any other participant who has been convicted, entered a plea of
10 guilty or nolo contendere for a serious crime:

11 a. involving theft, fraud, or dishonesty,

12 b. that bears substantial relationship to the applicant's
13 or participant's ability to safely or competently
14 participate in the program.

15 C. An applicant for the program shall provide to the Commission
16 an application in a form prescribed by the Commission that:

17 1. Includes a refundable application fee;

18 2. Demonstrates the applicant is subject to the jurisdiction of
19 this state;

20 3. Demonstrates the applicant has established a physical or
21 virtual location that is adequately accessible to the Commission,
22 from which testing will be developed and performed and where all
23 required records, documents, and data will be maintained;

1 4. Contains relevant personal and contact information for the
2 application, including legal names, addresses, telephone numbers, e-
3 mail addresses, website addresses, and other information required by
4 the Commission;

5 5. Discloses criminal conviction of the applicant or other
6 participating personnel, if any;

7 6. Demonstrates that the applicant has the necessary personnel,
8 financial, and technical expertise, access to capital, and developed
9 plans to test, monitor, and assess the innovative alcoholic beverage
10 product or service;

11 7. Contains a description of the innovative alcoholic beverage
12 or service to be tested, including statements regarding the
13 following:

- 14 a. how the innovative alcoholic beverage or service is
15 subject to licensing or other authorization
16 requirements outside the scope of the program,
17 including a specific list of all state laws,
18 regulations, and licensing or other requirements that
19 the applicant is seeking to have waived during the
20 testing period,
- 21 b. how the innovative alcoholic product or service would
22 benefit consumers,
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- c. how the innovative alcoholic product or service is different from other alcoholic beverage products or services available in this state,
- d. what risks may confront consumers that use or purchase the innovative alcoholic beverage product or services,
- e. how participating in the program would enable a successful test of the innovative alcoholic beverage product or services,
- f. a description of how the applicant will perform ongoing duties after the test, and
- g. how the applicant will end the test and protect consumers if the test fails, including providing evidence of sufficient liability coverage and financial reserves to protect consumers and to protect against insolvency by the applicant; and

8. Includes any additional information deemed necessary by the Commission.

C. An applicant shall file a sperate application for each innovative alcoholic beverage product or service the applicant wants to test.

D. After an application is filed, and before approving the application, the Commission may seek any additional information from the applicant that the Commission deems necessary.

1 E. Subject to subsection F of this section, no later than
2 ninety (90) days after the day on which a completed application is
3 received by the Commission, the Commission shall inform the
4 applicant as to whether the application is approved for entering
5 into the program.

6 F. The Commission and an applicant may mutually agree to extend
7 the ninety (90) day timeline as described in subsection E of this
8 section for the Commission to determine whether an application is
9 approved for entry into the program.

10 G. In reviewing an application under this section, the
11 Commission shall identify how the applicant's innovative alcoholic
12 beverage product or services is subject to licensing or other
13 authorization requirements outside of the program, including a
14 specific list of all state laws, regulations, and licensing or other
15 requirements that the applicant is seeking to have waived during the
16 testing period.

17 H. In reviewing the application, the Commission shall consider
18 whether a competitor to the applicant is or has been a previous
19 program participant and weigh that as a factor in allowing the
20 applicant to also become a participant.

21 I. If the Commission and each applicable agency approve
22 admitting an applicant into the program, then an applicant shall
23 become a participant.

1 J. The Commission may deny any application submitted under this
2 section, for any reason, at the Commission's discretion.

3 K. If the Commission denies an application submitted under this
4 section, the Commission shall provide to the applicant a written
5 description of the reasons for the denial.

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 8-103 of Title 37A, unless there
8 is created a duplication in numbering, reads as follows:

9 A. If the Commission approved an application under Section 2 of
10 this act, the participant shall have twelve (12) months after the
11 day of approval to test the innovative product or services described
12 in the participant's application.

13 B. A participant testing an innovative alcoholic beverage
14 product or service within the program is subject to the following:

15 1. Consumers shall be residents of this state;

16 2. The Commission may, on a case-by-case basis, specify the
17 maximum number of consumers that may enter into an agreement with
18 the participant to use the innovative alcoholic beverage product or
19 service;

20 3. The Commission may, if applicable on a case-by-case basis,
21 specify the maximum number of items for each item that may be
22 offered by a participant during the test of the innovative alcoholic
23 beverage product or service;

1 4. If a participant is accepted into the program, the
2 Commission shall notify other businesses in the industry that a
3 waiver was granted to afford other companies the opportunity to
4 apply for the same waiver if they choose.

5 C. This section does not restrict any participant who holds a
6 license or other authorization in another jurisdiction from acting
7 in accordance with that license or other authorization.

8 D. A participant is deemed to possess an appropriate license
9 pursuant to the laws of this state for the purpose of any provisions
10 of federal law requiring state licensure or authorization.

11 E. A participant that is testing an innovative alcoholic
12 beverage product or service is not subject to state laws,
13 regulations, licensing requirements, or authorization requirements
14 that were identified by the participant's application and have been
15 waived in writing by the Commission.

16 F. Notwithstanding any other provision of this act, a
17 participant shall not have immunity related to any criminal offense
18 committed during participation of this program.

19 G. By written notice, the Commission may end a participant's
20 participation in the program at any time and for any reason
21 including, but not limited to, the Commission determining the
22 participant is not operating in good faith to bring an innovative
23 alcoholic beverage product to market.

1 H. The Commission and the Commission's employees are not liable
2 for any business losses, or the recouping of application expenses,
3 related to the program including for:

4 1. Denying an applicant's application to participate in the
5 program for any reason; or

6 2. Ending a participant's participation in the program at any
7 time for any reason.

8 I. No guaranty association in this state may be held liable for
9 business losses or liabilities incurred as a result of activities
10 undertaken by a participant in the program.

11 SECTION 4. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 8-104 of Title 37A, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Before providing an innovative alcoholic beverage product or
15 service to a consumer, a participant shall disclose the following to
16 the consumer:

17 1. The name and contact information of the participant;

18 2. That the innovative alcoholic beverage product or service is
19 authorized pursuant to the program and, if applicable, that the
20 participant does not have a license or other authorization to
21 provide an alcoholic beverage product or service under state law
22 that regulates alcoholic beverage products outside the program;

1 3. That the innovative alcoholic beverage product or service is
2 undergoing testing and may not function as intended and may expose
3 the customer to risk;

4 4. That the provider of the innovative alcoholic beverage
5 product or service is not immune from civil liability for any losses
6 or damages caused by the innovative alcoholic beverage product or
7 service;

8 5. That the state does not endorse or recommend the innovative
9 alcoholic beverage product or service;

10 6. That the innovative alcoholic beverage product or service is
11 a temporary test that may be discontinued at the end of the testing
12 period;

13 7. The expected end date of the testing period; and

14 8. That a consumer may contact the Commission to file a
15 complaint regarding the innovative product or service being tested
16 and provide the Commission's telephone number and website address
17 where a complain may be filed.

18 B. The disclosures required in subsection A of this section
19 shall be provided to a consumer in a clear and conspicuous form and,
20 for an Internet or application based innovative alcoholic beverage
21 product or service, a consumer shall acknowledge receipt of the
22 disclosure before a transaction may be completed.

23 C. The Commission may require that a participant make
24 additional disclosures to a consumer.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 8-105 of Title 37A, unless there
3 is created a duplication in numbering, reads as follows:

4 A. At least thirty (30) days before the end of the twelve-month
5 testing period, a participant shall:

6 1. Notify the Commission that the participant will exit the
7 program, discontinue the participant's test, and will stop offering
8 any innovative alcoholic beverage product or service in the program
9 within sixty (60) days after the day on which the twelve-month
10 testing period ends; or

11 2. Seek an extension in accordance with Section 6 of this act.

12 B. Subject to subsection C of this section, if the Commission
13 does not receive notification as required by subsection A of this
14 section, the testing period ends at the end of the twelve-month
15 testing period and the participant shall immediately stop offering
16 each innovative alcoholic beverage product or service being tested.

17 C. If a test includes offering an innovative alcoholic beverage
18 product or service that requires ongoing duties, the participant
19 shall continued to fulfill those duties or arrange for another
20 person to fulfill those duties after the date on which the
21 participant exists the program.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 8-106 of Title 37A, unless there
24 is created a duplication in numbering, reads as follows:

1 A. No later than thirty (30) days before the end of the twelve-
2 month testing period, a participant may request an extension of the
3 testing period for the purpose of obtaining a license or other
4 authorization.

5 B. The Commission shall grant or deny a request for an
6 extension in accordance with subsection A of this section by the end
7 of the twelve-month testing period.

8 C. The Commission may grant an extension in accordance with
9 this section for not more than twelve (12) months after the end of
10 the testing period.

11 D. A participant that obtains an extension in accordance with
12 this section shall provide the Commission with a written report
13 every three (3) months that provides an update on efforts to obtain
14 a license or other authorization required by law, including any
15 submitted for licensure or other authorization, rejected
16 application, or issued license, or other authorization.

17 SECTION 7. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 8-107 of Title 37A, unless there
19 is created a duplication in numbering, reads as follows:

20 A. A participant shall retain records, documents, and data
21 produced in the ordinary course of business regarding an innovative
22 alcoholic beverage product or service tested in the program.

23 B. If an innovative alcoholic beverage product or service fails
24 before the end of the testing period, the participant shall notify

1 the Commission and report on actions taken by the participant to
2 ensure consumers have not been harmed as result of the failure.

3 C. The Commission shall establish quarterly reporting
4 requirements for a participant, including information about any
5 consumer complaints.

6 D. The Commission may request records, documents, and data from
7 a participant and, upon the Commission's request, a participant
8 shall make sure records, documents, and data available for
9 inspection by the Commission.

10 E. If the Commission determines that a participant has engaged
11 in, is engaging in, or is about to engage in any practice or
12 transaction that is in violation of this act or that constitutes a
13 violation of state or federal criminal law, the Commission shall
14 remove a participant from the program.

15 F. By October 1 of each year, the Commission shall provide an
16 annual report to the Legislature that provide information regarding
17 each participant and that provides recommendations regarding the
18 effectiveness of the program.

19 SECTION 8. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 8-108 of Title 37A, unless there
21 is created a duplication in numbering, reads as follows:

22 The Alcoholic Beverage Law Enforcement Commission shall
23 promulgate the rules necessary to implement this act.

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1 SECTION 9. This act shall become effective November 1, 2022.

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