

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3906 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Scott Fetgatter _____

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3906

By: Fetgatter

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to the Oklahoma Alcoholic Control
9 Act; creating the small farm producer license;
10 providing for authority pursuant to said license;
11 requiring maintenance of records of sales for
12 specified period of time; including certain
13 manufacture and sale in annual production; providing
14 for labels; amending Section 3, Chapter 366, O.S.L.
15 2016, as last amended by Section 1, Chapter 420,
16 O.S.L. 2019 (37A O.S. Supp. 2019, Section 1-103),
17 which relates to definitions; adding definition for
18 small farm producer; updating statutory references;
19 amending Section 13, Chapter 366, O.S.L. 2016, as
20 last amended by Section 2, Chapter 420, O.S.L. 2019
21 (37A O.S. Supp. 2019, Section 2-101), which relates
22 to license and administration fees; establishing
23 annual license fee for small farm producers;
24 providing for codification; and providing an
effective date.

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 2-131.1 of Title 37A, unless
there is created a duplication in numbering, reads as follows:

A. A small farm producer license shall authorize the holder
thereof:

1 1. To contract with a small farm winery license holder to
2 manufacture wine exclusively from produce grown by the licensee on
3 the premises described in the application and in the issued license.
4 All wine sold or served by the license holder shall be produced, in
5 whole or in part, using sound ripe grapes, fruits, berries or honey
6 grown or produced exclusively by the license holder and shall not
7 exceed one thousand (1000) gallons;

8 2. To conduct wine tastings of wine manufactured from produce
9 grown by the licensee on the licensed premises and at registered
10 farmers markets;

11 3. To sell wine manufactured from produce grown by the licensee
12 in the original unopened container or by the glass for either on-
13 premises or off-premises consumption to consumers on the premises of
14 the small farm producer license holder;

15 4. To sell and serve Oklahoma-manufactured wine, mulled wine,
16 or spiced wine, mixed with nonalcoholic beverages or food items such
17 as water, sugar, fruits and vegetables at any temperature for either
18 on-premises or off-premises consumption and not to exceed one
19 thousand (1000) gallons.

20 B. The small farm producer licensee shall maintain records of
21 all sales made under the license, including sales of agriculture
22 products to a small farm winery and sales to consumers, and maintain
23 records of all purchases of wine manufactured by such small farm
24 winery, for at least three (3) years after the sale or purchase.

1 C. The manufacturer for and sale of wine to holders of producer
2 licenses shall be included in the small farm winery licensee's
3 annual production.

4 D. The label for any such wine manufactured by the small farm
5 winery may be owned by either the small farm winery or the producer
6 licensee for whom the wine was manufactured.

7 SECTION 2. AMENDATORY Section 3, Chapter 366, O.S.L.
8 2016, as last amended by Section 1, Chapter 420, O.S.L. 2019 (37A
9 O.S. Supp. 2019, Section 1-103), is amended to read as follows:

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

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

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

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

24

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

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

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

14 7. "Beer distributor" means and includes any person licensed to
15 distribute beer for retail sale in the state, but does not include a
16 holder of a small brewer self-distribution license or brewpub self-
17 distribution license. The term "distributor", as used in ~~this act~~
18 the Oklahoma Alcoholic Beverage Control Act, shall be construed to
19 refer to a beer distributor;

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

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

5 10. "Brand extension" means:

6 a. after ~~the effective date of this act~~ October 1, 2018,
7 any brand of beer or cider introduced by a
8 manufacturer in this state which either:

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

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

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

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

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

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

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

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

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

21 15. "Convicted" and "conviction" mean and include a finding of
22 guilt resulting from a plea of guilty or nolo contendere, the
23 decision of a court or magistrate or the verdict of a jury,
24

1 irrespective of the pronouncement of judgment or the suspension
2 thereof;

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

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

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

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

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

20 a. as a low-point beer pursuant to the Low-Point Beer
21 Distribution Act in effect immediately prior to ~~the~~
22 ~~effective date of this act~~ October 1, 2018, and
23
24

1 b. as strong beer pursuant to the Alcoholic Beverage
2 Control Act in effect immediately prior to ~~the~~
3 ~~effective date of this act~~ October 1, 2018,
4 and continues to be sold and distributed as such on October 1, 2018.
5 Dual-strength beer does not include a brand of beer that arose as a
6 result of a brand extension as defined in this section;

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

13 22. "Good cause" means:

14 a. failure by the distributor to comply with the material
15 and reasonable provisions of a written agreement or
16 understanding with the manufacturer, or

17 b. failure by the distributor to comply with the duty of
18 good faith;

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

23 24. "Grocery store" means a person primarily engaged in
24 retailing a general line of food, such as canned or frozen foods,

1 fresh fruits and vegetables, and fresh and prepared meats, fish and
2 poultry;

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

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

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

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

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

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

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

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

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

18 33. "Mixed beverage cooler" means any beverage, by whatever
19 name designated, consisting of an alcoholic beverage and fruit or
20 vegetable juice, fruit or vegetable flavorings, dairy products or
21 carbonated water containing more than one-half of one percent (1/2
22 of 1%) of alcohol measured by volume but not more than seven percent
23 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is
24 packaged in a container not larger than three hundred seventy-five

1 (375) milliliters. Such term shall include but not be limited to
2 the beverage popularly known as a "wine cooler";

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24

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

4 54. "Small farm producer" means a person that annually produces
5 in this state no less than one hundred (100) vines of sound, ripe
6 grapes, one thousand (1,000) pounds of other sound, ripe fruits or
7 berries, or one hundred (100) pounds of honey;

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

11 ~~55.~~ 56. "Small farm winery" means a wine-making establishment
12 that does not annually produce for sale more than fifteen thousand
13 (15,000) gallons of wine as reported on the United States Department
14 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of
15 Wine Premises Operations (TTB Form 5120.17);

16 ~~56.~~ 57. "Sparkling wine" means champagne or any artificially
17 carbonated wine;

18 ~~57.~~ 58. "Special event" means an entertainment, recreation or
19 marketing event that occurs at a single location on an irregular
20 basis and at which alcoholic beverages are sold;

21 ~~58.~~ 59. "Spirits" means any beverage other than wine or beer,
22 which contains more than one-half of one percent (1/2 of 1%) alcohol
23 measured by volume, and obtained by distillation, whether or not
24 mixed with other substances in solution and includes those products

1 known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and
2 fortified wines and similar compounds, but shall not include any
3 alcohol liquid completely denatured in accordance with the Acts of
4 Congress and regulations pursuant thereto;

5 ~~59.~~ 60. "Strong beer" means beer which, prior to ~~the effective~~
6 ~~date of this act~~ October 1, 2018, was distributed pursuant to the
7 Oklahoma Alcoholic Beverage Control Act, Section 501 et seq. of
8 Title 37 of the Oklahoma Statutes;

9 ~~60.~~ 61. "Successor manufacturer" means a primary source of
10 supply, a brewer, a cider manufacturer or an importer that acquires
11 rights to a beer or cider brand from a predecessor manufacturer;

12 ~~61.~~ 62. "Tax Commission" means the Oklahoma Tax Commission;

13 ~~62.~~ 63. "Territory" means a geographic region with a specified
14 boundary;

15 ~~63.~~ 64. "Wine and spirits wholesaler" or "wine and spirits
16 distributor" means and includes any sole proprietorship or
17 partnership licensed to distribute wine and spirits in the state.
18 The term "wholesaler", as used in ~~this act~~ the Oklahoma Alcoholic
19 Beverage Control Act, shall be construed to refer to a wine and
20 spirits wholesaler;

21 ~~64.~~ 65. "Wine" means and includes any beverage containing more
22 than one-half of one percent (1/2 of 1%) alcohol by volume and not
23 more than twenty-four percent (24%) alcohol by volume at sixty (60)
24 degrees Fahrenheit obtained by the fermentation of the natural

1 contents of fruits, vegetables, honey, milk or other products
2 containing sugar, whether or not other ingredients are added, and
3 includes vermouth and sake, known as Japanese rice wine;

4 ~~65.~~ 66. "Winemaker" means and includes any person or
5 establishment who manufactures for human consumption any wine upon
6 which a license fee and a tax are imposed by any law of this state;
7 and

8 ~~66.~~ 67. "Satellite tasting room" means a licensed establishment
9 operated off the licensed premises of the holder of a small farm
10 winery or winemaker license, which serves wine for on-premises or
11 off-premises consumption.

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

15 SECTION 3. This act shall become effective November 1, 2020.

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17 57-2-11221 SD 02/20/20

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