

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 1035

By: Coleman

AS INTRODUCED

An Act relating to alcoholic beverages; amending 37A O.S. 2021, Section 1-103, which relates to definitions; defining term; expanding definition; and providing an effective date.

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

SECTION 1. AMENDATORY 37A O.S. 2021, Section 1-103, is amended to read as follows:

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

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

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

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

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

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

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

18 7. "Beer distributor" means and includes any person licensed to
19 distribute beer for retail sale in the state, but does not include a
20 holder of a small brewer self-distribution license or brewpub self-
21 distribution license. The term "distributor", as used in the
22 Oklahoma Alcoholic Beverage Control Act, shall be construed to refer
23 to a beer distributor;
24

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

6 9. "Bottle service" means the sale and provision of spirits in
7 their original packages by a mixed beverage licensee to be consumed
8 in that mixed beverage licensee's club suite;

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

13 11. "Brand extension" means:

14 a. after October 1, 2018, any brand of beer or cider
15 introduced by a manufacturer in this state which
16 either:

17 (1) incorporates all or a substantial part of the
18 unique features of a preexisting brand of the
19 same licensed brewer, or

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

22 b. any brand of beer that a brewer, the majority of whose
23 total volume of all brands of beer distributed in this
24 state by such brewer on January 1, 2016, was

distributed as low-point beer, desires to sell,
introduces, begins selling or theretofore has sold and
desires to continue selling a strong beer in this
state which either:

- (1) incorporates or incorporated all or a substantial
part of the unique features of a preexisting low-
point beer brand of the same licensed brewer, or
- (2) relies or relied to a significant extent on the
goodwill associated with a preexisting low-point
beer brand;

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

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

14. "Cider" means any alcoholic beverage obtained by the
alcoholic fermentation of fruit juice, including but not limited to
flavored, sparkling or carbonated cider. For the purposes of the
manufacture of this product, cider may be manufactured by either
manufacturers or brewers. For the purposes of the distribution of

1 this product, cider may be distributed by either wine and spirits
2 wholesalers or beer distributors;

3 15. "Club suite" means a designated area within the premises of
4 a mixed beverage licensee designed to provide an exclusive space
5 which is limited to a patron or patrons specifically granted access
6 by a mixed beverage licensee and is not accessible to other patrons
7 of the mixed beverage licensee or the public. A club suite must
8 have a clearly designated point of access for a patron or patrons
9 specifically granted access by the mixed beverage licensee to ensure
10 that persons present in the suite are limited to patrons
11 specifically granted access by the mixed beverage licensee and
12 employees providing services to the club suite;

13 16. "Cocktail" means a type of mixed beverage as defined in
14 Section 7-102 of this title;

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

19 ~~17.~~ 18. "Convicted" and "conviction" mean and include a finding
20 of guilt resulting from a plea of guilty or nolo contendere, the
21 decision of a court or magistrate or the verdict of a jury,
22 irrespective of the pronouncement of judgment or the suspension
23 thereof;

1 ~~18.~~ 19. "Designated products" means the brands of wine or
2 spirits offered for sale by a manufacturer that the manufacturer has
3 assigned to a designated wholesaler for exclusive distribution;

4 ~~19.~~ 20. "Designated wholesaler" means a wine and spirits
5 wholesaler who has been selected by a manufacturer as a wholesaler
6 appointed to distribute designated products;

7 ~~20.~~ 21. "Director" means the Director of the ABLE Commission;

8 ~~21.~~ 22. "Distiller" means any person who produces spirits from
9 any source or substance, or any person who brews or makes mash, wort
10 or wash, fit for distillation or for the production of spirits
11 (except a person making or using such material in the authorized
12 production of wine or beer, or the production of vinegar by
13 fermentation), or any person who by any process separates alcoholic
14 spirits from any fermented substance, or any person who, making or
15 keeping mash, wort or wash, has also in his or her possession or use
16 a still;

17 ~~22.~~ 23. "Distributor agreement" means the written agreement
18 between the distributor and brewer as set forth in Section 3-108 of
19 this title;

20 ~~23.~~ 24. "Drug store" means a person primarily engaged in
21 retailing prescription and nonprescription drugs and medicines;

22 ~~24.~~ 25. "Dual-strength beer" means a brand of beer that,
23 immediately prior to April 15, 2017, was being sold and distributed
24 in this state:

1 a. as a low-point beer pursuant to the Low-Point Beer
2 Distribution Act in effect immediately prior to
3 October 1, 2018, and

4 b. as strong beer pursuant to the Alcoholic Beverage
5 Control Act in effect immediately prior to October 1,
6 2018,

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

10 ~~25.~~ 26. "Fair market value" means the value in the subject
11 territory covered by the written agreement with the distributor or
12 wholesaler that would be determined in an arm's length transaction
13 entered into without duress or threat of termination of the
14 distributor's or wholesaler's rights and shall include all elements
15 of value, including goodwill and going-concern value;

16 ~~26.~~ 27. "Good cause" means:

- 17 a. failure by the distributor to comply with the material
18 and reasonable provisions of a written agreement or
19 understanding with the brewer, or
20 b. failure by the distributor to comply with the duty of
21 good faith;

22 ~~27.~~ 28. "Good faith" means the duty of each party to any
23 distributor agreement and all officers, employees or agents thereof
24
25

1 to act with honesty in fact and within reasonable standards of fair
2 dealing in the trade;

3 ~~28.~~ 29. "Grocery store" means a person primarily engaged in
4 retailing a general line of food, such as canned or frozen foods,
5 fresh fruits and vegetables, and fresh and prepared meats, fish and
6 poultry;

7 ~~29.~~ 30. "Hotel" or "motel" means an establishment which is
8 licensed to sell alcoholic beverages by the individual drink and
9 which contains guestroom accommodations with respect to which the
10 predominant relationship existing between the occupants thereof and
11 the owner or operator of the establishment is that of innkeeper and
12 guest. For purposes of this section, the existence of other legal
13 relationships as between some occupants and the owner or operator
14 thereof shall be immaterial;

15 ~~30.~~ 31. "Legal newspaper" means a newspaper meeting the
16 requisites of a newspaper for publication of legal notices as
17 prescribed in Sections 101 through 114 of Title 25 of the Oklahoma
18 Statutes;

19 ~~31.~~ 32. "Licensee" means any person holding a license under the
20 Oklahoma Alcoholic Beverage Control Act, and any agent, servant or
21 employee of such licensee while in the performance of any act or
22 duty in connection with the licensed business or on the licensed
23 premises;

1 ~~32.~~ 33. "Low-point beer" shall mean any beverages containing
2 more than one-half of one percent (1/2 of 1%) alcohol by volume, and
3 not more than three and two-tenths percent (3.2%) alcohol by weight,
4 including but not limited to, beer or cereal malt beverages obtained
5 by the alcoholic fermentation of an infusion by barley or other
6 grain, malt or similar products;

7 ~~33.~~ 34. "Manufacturer" means a distiller, winemaker, rectifier
8 or bottler of any alcoholic beverage (other than beer) and its
9 subsidiaries, affiliates and parent companies;

10 ~~34.~~ 35. "Manufacturer's agent" means a salaried or commissioned
11 salesperson who is the agent authorized to act on behalf of the
12 manufacturer or nonresident seller in the state;

13 ~~35.~~ 36. "Meals" means foods commonly ordered at lunch or dinner
14 and at least part of which is cooked on the licensed premises and
15 requires the use of dining implements for consumption. Provided,
16 that the service of only food such as appetizers, sandwiches, salads
17 or desserts shall not be considered "meals";

18 ~~36.~~ 37. "Mini-bar" means a closed container, either
19 refrigerated in whole or in part, or nonrefrigerated, and access to
20 the interior of which is:

- 21 a. restricted by means of a locking device which requires
22 the use of a key, magnetic card or similar device, or
23 b. controlled at all times by the licensee;
- 24
25

1 ~~37.~~ 38. "Mixed beverage cooler" means any beverage, by whatever
2 name designated, consisting of an alcoholic beverage and fruit or
3 vegetable juice, fruit or vegetable flavorings, dairy products or
4 carbonated water containing more than one-half of one percent (1/2
5 of 1%) of alcohol measured by volume but not more than seven percent
6 (7%) alcohol by volume at sixty (60) degrees Fahrenheit and which is
7 packaged in a container not larger than three hundred seventy-five
8 (375) milliliters. Such term shall include but not be limited to
9 the beverage popularly known as a "wine cooler";

10 ~~38.~~ 39. "Mixed beverages" means one or more servings of a
11 beverage composed in whole or part of an alcoholic beverage in a
12 sealed or unsealed container of any legal size for consumption on
13 the premises where served or sold by the holder of a mixed beverage,
14 beer and wine, caterer, public event, charitable event or special
15 event license; provided, that a beer, cider, or wine mixed with
16 ingredients nonalcoholic in nature including, but not limited to,
17 water, juice, sugar, fruits, or vegetables and sold by a small
18 brewer, brewpub, small farm winery, or winemaker, shall not be
19 considered a mixed beverage;

20 ~~39.~~ 40. "Motion picture theater" means an establishment which
21 is licensed by Section 2-110 of this title to sell alcoholic
22 beverages by the individual drink and where motion pictures are
23 exhibited, and to which the general public is admitted;

1 ~~40.~~ 41. "Nondesignated products" means the brands of wine or
2 spirits offered for sale by a manufacturer that have not been
3 assigned to a designated wholesaler;

4 ~~41.~~ 42. "Nonresident seller" means any person licensed pursuant
5 to Section 2-135 of this title;

6 ~~42.~~ 43. "Retail salesperson" means a salesperson soliciting
7 orders from and calling upon retail alcoholic beverage stores with
8 regard to his or her product;

9 ~~43.~~ 44. "Occupation" as used in connection with "occupation
10 tax" means the sites occupied as the places of business of the
11 manufacturers, brewers, wholesalers, beer distributors, retailers,
12 mixed beverage licensees, on-premises beer and wine licensees,
13 bottle clubs, caterers, public event and special event licensees;

14 ~~44.~~ 45. "Original package" means any container of alcoholic
15 beverage filled and stamped or sealed by the manufacturer or brewer;

16 ~~45.~~ 46. "Package store" means any sole proprietor or
17 partnership that qualifies to sell wine, beer and/or spirits for
18 off-premises consumption and that is not a grocery store,
19 convenience store or drug store, or other retail outlet that is not
20 permitted to sell wine or beer for off-premises consumption;

21 ~~46.~~ 47. "Patron" means any person, customer or visitor who is
22 not employed by a licensee or who is not a licensee;

23 ~~47.~~ 48. "Person" means an individual, any type of partnership,
24 corporation, association, limited liability company or any

1 individual involved in the legal structure of any such business
2 entity;

3 ~~48.~~ 49. "Premises" means the grounds and all buildings and
4 appurtenances pertaining to the grounds including any adjacent
5 premises if under the direct or indirect control of the licensee and
6 the rooms and equipment under the control of the licensee and used
7 in connection with or in furtherance of the business covered by a
8 license. Provided that the ABLE Commission shall have the authority
9 to designate areas to be excluded from the licensed premises solely
10 for the purpose of:

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

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

19 ~~49.~~ 50. "Private event" means a social gathering or event
20 attended by invited guests who share a common cause, membership,
21 business or task and have a prior established relationship. For
22 purposes of this definition, advertisement for general public
23 attendance or sales of tickets to the general public shall not
24 constitute a private event;

1 ~~50.~~ 51. "Public event" means any event that can be attended by
2 the general public;

3 ~~51.~~ 52. "Rectifier" means any person who rectifies, purifies or
4 refines spirits or wines by any process (other than by original and
5 continuous distillation, or original and continuous processing, from
6 mash, wort, wash or other substance, through continuous closed
7 vessels and pipes, until the production thereof is complete), and
8 any person who, without rectifying, purifying or refining spirits,
9 shall by mixing (except for immediate consumption on the premises
10 where mixed) such spirits, wine or other liquor with any material,
11 manufactures any spurious, imitation or compound liquors for sale,
12 under the name of whiskey, brandy, rum, gin, wine, spirits, cordials
13 or any other name;

14 ~~52.~~ 53. "Regulation" or "rule" means a formal rule of general
15 application promulgated by the ABLE Commission as herein required;

16 ~~53.~~ 54. "Restaurant" means an establishment that is licensed to
17 sell alcoholic beverages by the individual drink for on-premises
18 consumption and where food is prepared and sold for immediate
19 consumption on the premises;

20 ~~54.~~ 55. "Retail container for spirits and wines" means an
21 original package of any capacity approved by the United States
22 Bureau of Alcohol, Tobacco and Firearms;

23 ~~55.~~ 56. "Retailer" means a package store, grocery store,
24 convenience store or drug store licensed to sell alcoholic beverages

1 for off-premises consumption pursuant to a Retail Spirits License,
2 Retail Wine License or Retail Beer License;

3 ~~56.~~ 57. "Sale" means any transfer, exchange or barter in any
4 manner or by any means whatsoever, and includes and means all sales
5 made by any person, whether as principal, proprietor or as an agent,
6 servant or employee. The term "sale" is also declared to be and
7 include the use or consumption in this state of any alcoholic
8 beverage obtained within or imported from without this state, upon
9 which the excise tax levied by the Oklahoma Alcoholic Beverage
10 Control Act has not been paid or exempted;

11 ~~57.~~ 58. "Short-order food" means food other than full meals
12 including but not limited to sandwiches, soups and salads. Provided
13 that popcorn, chips and other similar snack food shall not be
14 considered "short-order food";

15 ~~58.~~ 59. "Small brewer" means a brewer who manufactures less
16 than sixty-five thousand barrels of beer annually pursuant to a
17 validly issued Small Brewer License hereunder;

18 ~~59.~~ 60. "Small farm wine" means a wine that is produced by a
19 small farm winery with seventy-five percent (75%) or more Oklahoma-
20 grown grapes, berries, other fruits, honey or vegetables;

21 ~~60.~~ 61. "Small farm winery" means a wine-making establishment
22 that does not annually produce for sale more than fifteen thousand
23 (15,000) gallons of wine as reported on the United States Department
24

1 of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, Report of
2 Wine Premises Operations (TTB Form 5120.17);

3 ~~61.~~ 62. "Sparkling wine" means champagne or any artificially
4 carbonated wine;

5 ~~62.~~ 63. "Special event" means an entertainment, recreation or
6 marketing event that occurs at a single location on an irregular
7 basis and at which alcoholic beverages are sold;

8 ~~63.~~ 64. "Spirits" means any beverage other than wine or beer,
9 which contains more than one-half of one percent (1/2 of 1%) alcohol
10 measured by volume, and obtained by distillation, whether or not
11 mixed with other substances in solution and includes those products
12 known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and
13 fortified wines and similar compounds, but shall not include any
14 alcohol liquid completely denatured in accordance with the Acts of
15 Congress and regulations pursuant thereto;

16 ~~64.~~ 65. "Strong beer" means beer which, prior to October 1,
17 2018, was distributed pursuant to the Oklahoma Alcoholic Beverage
18 Control Act, Section 501 et seq. of Title 37 of the Oklahoma
19 Statutes;

20 ~~65.~~ 66. "Successor brewer" means a primary source of supply, a
21 brewer, a cider manufacturer or an importer that acquires rights to
22 a beer or cider brand from a predecessor brewer;

23 ~~66.~~ 67. "Tax Commission" means the Oklahoma Tax Commission;
24
25

1 ~~67.~~ 68. "Territory" means a geographic region with a specified
2 boundary;

3 ~~68.~~ 69. "Wine and spirits wholesaler" or "wine and spirits
4 distributor" means and includes any sole proprietorship or
5 partnership licensed to distribute wine and spirits in the state.
6 The term "wholesaler", as used in the Oklahoma Alcoholic Beverage
7 Control Act, shall be construed to refer to a wine and spirits
8 wholesaler;

9 ~~69.~~ 70. "Wine" means and includes any beverage containing more
10 than one-half of one percent (1/2 of 1%) alcohol by volume and not
11 more than twenty-four percent (24%) alcohol by volume at sixty (60)
12 degrees Fahrenheit obtained by the fermentation of the natural
13 contents of fruits, vegetables, honey, milk or other products
14 containing sugar, whether or not other ingredients are added, and
15 includes vermouth and sake, known as Japanese rice wine;

16 ~~70.~~ 71. "Winemaker" means and includes any person or
17 establishment who manufactures for human consumption any wine upon
18 which a license fee and a tax are imposed by any law of this state;
19 and

20 ~~71.~~ 72. "Satellite tasting room" means a licensed establishment
21 operated off the licensed premises of the holder of a small farm
22 winery or winemaker license, which serves wine for on-premises or
23 off-premises consumption.
24
25

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

4 SECTION 2. This act shall become effective November 1, 2023.

5
6 59-1-546 MR 1/19/2023 12:49:56 PM
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25