

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 2090

By: Echols

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6 AS INTRODUCED

7 An Act relating to alcoholic beverages; creating a
8 delivery service license for delivery of alcoholic
9 beverages; providing requirements to receive a
10 delivery service license; providing actions a
11 delivery service licensee may or may not undertake;
12 providing delivery service license renewal amount;
13 allowing a delivery service licensee to charge
14 consumers a delivery fee; prohibiting delivery
15 service licensee from charging, adding on, or
16 collecting any portion of the amount of the retail
17 sales price for the alcoholic beverages; prohibiting
18 a retail spirits licensee from using delivery service
19 licensees for the purpose of completing alcoholic
20 beverage product deliveries to consumers; exempting a
21 technology services company from needing a license;
22 granting the Alcoholic Beverage Law Enforcement
23 Commission the ability to enforce this act;
24 prohibiting direct shipment of alcohol, liquor, wine,
or beer from any manufacturer; providing nothing
shall be construed to authorize the direct shipment
of alcohol, liquor, wine, or beer from any
manufacturer; providing no person shall use a license
or exercise any privileges granted by the license
except as provided by the Oklahoma Alcoholic Beverage
Control Act; providing that no package containing
alcoholic beverages may be delivered to or left
unattended at a residence or business address;
providing that the ABLE Commission is authorized to
promulgate rules, regulations, forms, and procedures;
providing that deliveries authorized by a licensee to
be made to a consumer shall be deemed a direct hand-
to-hand sale as though the consumer was physically
present on the licensed premises and authorized by
law; amending 37A O.S. 2021, Sections 2-101 and 2-
161, which relate to annual fees and curbside pickup

1 and delivery; providing delivery service license
2 annual fee; providing that a delivery service
3 licensee may transport and deliver alcoholic beverage
4 products; providing that a retail beer or retail wine
5 licensee may sell curbside and deliver; providing
6 that employees or independent contractors of retail
7 beer or retail wine licensees or delivery service
8 licensees shall be licensed to make alcoholic
9 beverage product deliveries; providing that a
10 delivery service licensee shall be held responsible
11 for violations of alcoholic beverage laws or
12 administrative rules of the ABLE Commission;
13 providing for codification; providing an effective
14 date; and declaring an emergency.

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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 2-162 of Title 37A, unless there
is created a duplication in numbering, reads as follows:

A. Any individual, limited liability company, corporation, or
partnership that is registered to do business in this state,
regardless of the residency of the ownership of the entity, may
apply for and be issued a delivery service license that authorizes
the licensee to deliver alcoholic beverages from a store holding a
retail beer or retail wine license, licensed by the Alcoholic
Beverage Law Enforcement (ABLE) Commission to sell alcoholic
beverage products, to any person in this state who is at least
twenty-one (21) years of age for the individual's personal use and
not for resale.

1 B. To receive a delivery service license, an applicant shall do
2 all of the following:

3 1. File an application with the Alcoholic Beverage Law
4 Enforcement (ABLE) Commission;

5 2. Provide to the ABLE Commission a sample contract that the
6 applicant intends to enter into with a retail beer or retail wine
7 licensee for the delivery of alcoholic beverage products, unless the
8 applicant is the holder of a retail beer or retail wine license or
9 operates under the same parent company as the retail beer or retail
10 wine license holder;

11 3. Submit to the ABLE Commission an outline of internal or
12 external training for delivery service personnel that addresses
13 topics such as identifying underage persons, intoxicated persons,
14 and fake or altered identification;

15 4. Provide an attestation that the applicant is at least
16 twenty-one (21) years of age and has not been convicted of a felony
17 in any state or federal court;

18 5. Provide proof of a general liability insurance policy in an
19 amount not less than One Million Dollars (\$1,000,000.00) per
20 occurrence; and

21 6. Be properly registered to conduct business in Oklahoma.

22 C. A delivery service licensee:

23 1. May contract with any retail beer or retail wine licensee,
24 licensed to sell alcoholic beverage products for off-premises

1 consumption, for the purpose of delivering alcoholic beverage
2 products;

3 2. May use its own employees or independent contractors who are
4 at least twenty-one (21) years of age to deliver such alcoholic
5 beverage products, provided such delivery service personnel shall
6 not have been convicted of any criminal offense relating to
7 alcoholic beverages. The delivery service licensee shall complete a
8 criminal history records check on each delivery driver who delivers
9 alcoholic beverages for a licensee;

10 3. May facilitate orders by telephone, Internet, or by other
11 electronic means for the sale and delivery of alcoholic beverages.
12 If payment is not received at the time of order, the delivery
13 service licensee may act as an agent of the retail licensee in the
14 collection of payments from the sale of alcoholic beverages, but the
15 full amount of each order must be handled in a manner that gives the
16 retail licensee control over the ultimate receipt of the payment
17 from the consumer with the retail licensee operating as the merchant
18 of record. The retail beer or retail wine licensee shall remain
19 responsible for the proper remittance of all applicable taxes on the
20 sale of the product;

21 4. Shall deliver only sealed containers of alcoholic beverage
22 products;

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1 5. Shall obtain from the consumer a confirmation that he or she
2 is at least twenty-one (21) years of age at the time the order is
3 placed;

4 6. Shall require the recipient, at the time of delivery, to
5 provide valid photo identification verifying he or she is at least
6 twenty-one (21) years of age and sign for the delivery;

7 7. Shall possess identification scanning software technology or
8 a state-of-the-art alternative at the point of delivery to
9 authenticate that the recipient is at least twenty-one (21) years of
10 age, and collect the recipient's name and date of birth;

11 8. Shall return all alcoholic beverages to the retail beer or
12 retail wine licensee if the recipient is under twenty-one (21) years
13 of age, appears intoxicated, fails to provide proof of
14 identification, fails or refuses to sign for delivery, fails to
15 complete the identification verification process, declines to accept
16 the delivery of alcoholic beverages or beer, or if any circumstances
17 in the delivery environment indicate illegal conduct,
18 overconsumption, or an otherwise unsafe environment for the
19 consumption of alcohol. Such return shall occur on the same
20 business day;

21 9. May not deliver any alcoholic beverage to any person located
22 within a dry jurisdiction in Oklahoma;

23 10. Shall pick up alcoholic beverages for delivery only during
24 lawful sales hours in that jurisdiction for the retail beer or

1 retail wine licensee holder; provided, that orders may be delivered
2 and completed on the same day within a reasonable time thereafter;

3 11. Shall permit the ABLE Commission to perform an audit of the
4 licensee's records upon request and with sufficient notification;

5 12. Shall be deemed to have consented to the jurisdiction of
6 the ABLE Commission and the Oklahoma courts concerning enforcement
7 of this section and any related laws or rules; and

8 13. Shall be responsible for delivery of alcoholic beverage
9 products as provided in this act and by rule.

10 D. A delivery service licensee may renew its license with the
11 ABLE Commission by maintaining all qualifications, paying annually a
12 renewal fee of Five Hundred Dollars (\$500.00), and providing the
13 Commission with a true copy of its current license. The annual fee
14 for delivery service licensees shall be collected by the ABLE
15 Commission for deposit and credit to the General Revenue Fund of
16 this state.

17 E. A delivery service licensee shall be authorized to charge
18 the consumer a delivery fee but shall not charge, add on, or collect
19 any portion of the amount of the retail sales price for the
20 alcoholic beverages.

21 F. A retail spirits licensee shall be prohibited from using
22 delivery service licensees for the purpose of completing alcoholic
23 beverage product deliveries to consumers.

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1 G. Nothing in this act shall be construed to require a
2 technology services company to obtain a delivery service license if
3 the company does not employ or contract with delivery agents, but
4 merely provides software or a digital network application that
5 connects consumers and retail beer or retail wine licensee for the
6 delivery of alcoholic beverages from the retail beer or retail wine
7 licensee. However, the act of connecting consumers to retail beer
8 or retail wine licensee shall serve to grant jurisdiction to the
9 State of Oklahoma.

10 H. The ABLE Commission may enforce the requirements of this
11 section by the same administrative proceedings that apply to all
12 other alcoholic beverage licensees.

13 I. The ABLE Commission may enforce the requirements of this
14 section against any employee or independent contractor of a retail
15 beer or retail wine licensee or delivery service licensee,
16 irrespective of the status of any delivery service personnel as an
17 independent contractor or employee. Delivery to a minor shall be
18 treated as furnishing alcohol to a minor and shall result in any
19 applicable disciplinary action; provided, that the retail beer or
20 retail wine licensee shall not be held liable for violations that
21 occur after transferring possession of the alcohol beverage product
22 to the delivery service licensee.

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1 J. Nothing in this act shall be construed to authorize the
2 direct shipment of alcohol, liquor, wine, or beer from any
3 manufacturer.

4 K. No person shall use a license or exercise any privileges
5 granted by the license except as provided by the Oklahoma Alcoholic
6 Beverage Control Act.

7 L. No package containing alcoholic beverages may be delivered
8 to or left unattended at a residence or business address except for
9 the delivery of such package in person to the purchaser confirmed to
10 be twenty-one (21) years of age or older.

11 M. The ABLE Commission is authorized to promulgate rules,
12 regulations, forms, and procedures necessary to implement and
13 enforce the provisions of this section.

14 N. For purposes of this section, each delivery authorized by a
15 licensee to be made to a consumer shall be deemed a direct hand-to-
16 hand sale as though the consumer was physically present on the
17 licensed premises and authorized by law by such licensee.

18 SECTION 2. AMENDATORY 37A O.S. 2021, Section 2-101, is
19 amended to read as follows:

20 Section 2-101. A. Except as otherwise provided in this
21 section, the licenses issued by the ABLE Commission, and the annual
22 fees therefor, shall be as follows:

- 23 1. Brewer License..... \$1,250.00
- 24 2. Small Brewer License..... \$125.00

1		\$450.00
2		(renewal)
3	15. Bottle Club License.....	\$1,000.00
4		(initial license)
5		\$900.00
6		(renewal)
7	16. Caterer License.....	\$1,005.00
8		(initial license)
9		\$905.00
10		(renewal)
11	17. Annual Special Event License.....	\$55.00
12	18. Quarterly Special Event License.....	\$55.00
13	19. Hotel Beverage License.....	\$1,005.00
14		(initial license)
15		\$905.00
16		(renewal)
17	20. Airline/Railroad/Commercial Passenger Vessel Beverage	
18	License.....	\$1,005.00
19		(initial license)
20		\$905.00
21		(renewal)
22	21. Agent License.....	\$55.00
23	22. Employee License.....	\$30.00
24	23. Industrial License.....	\$23.00

1	24.	Carrier License.....	\$23.00
2	25.	Private Carrier License.....	\$23.00
3	26.	Bonded Warehouse License.....	\$190.00
4	27.	Storage License.....	\$23.00
5	28.	Nonresident Seller License	\$750.00
6	29.	Manufacturer License:	
7	a.	50 cases or less sold in Oklahoma in	
8		last calendar year.....	\$50.00
9	b.	51 to 500 cases sold in Oklahoma in	
10		last calendar year.....	\$75.00
11	c.	501 cases or more sold in Oklahoma in	
12		last calendar year.....	\$150.00
13	30.	Manufacturer's Agent License.....	\$55.00
14	31.	Sacramental Wine Supplier License.....	\$100.00
15	32.	Charitable Auction License.....	\$1.00
16	33.	Charitable Alcoholic Beverage License.....	\$55.00
17	34.	Winemaker Self-Distribution License.....	\$750.00
18	35.	Annual Public Event License.....	\$1,005.00
19	36.	One-Time Public Event License.....	\$255.00
20	37.	Small Brewer Self-Distribution License.....	\$750.00
21	38.	Brewpub License.....	\$1,005.00
22	39.	Brewpub Self-Distribution License.....	\$750.00
23	40.	Complimentary Beverage License.....	\$75.00
24	41.	Satellite Tasting Room License.....	\$100.00

1 42. Delivery Service License..... \$500.00

2 B. 1. There shall be added to the initial or renewal fees for
3 a Mixed Beverage License an administrative fee, which shall not be
4 deemed to be a license fee, in the amount of Five Hundred Dollars
5 (\$500.00), which shall be paid at the same time and in the same
6 manner as the license fees prescribed by paragraph 12 of subsection
7 A of this section; provided, this fee shall not be assessed against
8 service organizations or fraternal beneficiary societies which are
9 exempt under Section 501(c)(19), (8) or (10) of the Internal Revenue
10 Code.

11 2. There shall be added to the fee for a Mixed Beverage/Caterer
12 Combination License an administrative fee, which shall not be deemed
13 to be a license fee, in the amount of Two Hundred Fifty Dollars
14 (\$250.00), which shall be paid at the same time and in the same
15 manner as the license fee prescribed by paragraph 13 of subsection A
16 of this section.

17 C. Notwithstanding the provisions of subsection A of this
18 section:

19 1. The license fee for a mixed beverage or bottle club license
20 for those service organizations or fraternal beneficiary societies
21 which are exempt under Section 501(c)(19), (8) or (10) of the
22 Internal Revenue Code shall be Five Hundred Dollars (\$500.00) per
23 year; and
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1 2. The renewal fee for an airline/railroad/commercial passenger
2 vessel beverage license held by a railroad described in 49 U.S.C.,
3 Section 24301, shall be One Hundred Dollars (\$100.00).

4 D. An applicant may apply for and receive both an on-premises
5 beer and wine license and a caterer license.

6 E. All licenses, except as otherwise provided, shall be valid
7 for one (1) year from date of issuance unless revoked or
8 surrendered. Provided, all employee licenses shall be valid for two
9 (2) years.

10 F. The holder of a license, issued by the ABLE Commission, for
11 a bottle club located in a county of this state where the sale of
12 alcoholic beverages by the individual drink for on-premises
13 consumption has been authorized, may exchange the bottle club
14 license for a mixed beverage license or an on-premises beer and wine
15 license and operate the licensed premises as a mixed beverage
16 establishment or an on-premises beer and wine establishment subject
17 to the provisions of the Oklahoma Alcoholic Beverage Control Act.
18 There shall be no additional fee for such exchange and the mixed
19 beverage license or on-premises beer and wine license issued shall
20 expire one (1) year from the date of issuance of the original bottle
21 club license.

22 G. In addition to the applicable licensing fee, the following
23 surcharge shall be assessed annually on the following licenses:

24 1. Nonresident Seller License..... \$2,500.00

1	2. Manufacturer License:	
2	a. 50 cases or less sold in Oklahoma in	
3	last calendar year.....	\$100.00
4	b. 51 to 500 cases sold in Oklahoma in	
5	last calendar year.....	\$225.00
6	c. 501 cases or more sold in Oklahoma in	
7	last calendar year.....	\$450.00
8	3. Wine and Spirits Wholesaler License.....	\$2,500.00
9	4. Beer Distributor.....	\$1,000.00
10	5. Retail Spirits License for cities and towns	
11	over 5,000 population.....	\$250.00
12	6. Retail Spirits License for cities and towns	
13	from 2,501 to 5,000 population.....	\$200.00
14	7. Retail Spirits License for cities and towns	
15	from 200 to 2,500 population.....	\$150.00
16	8. Retail Wine License.....	\$250.00
17	9. Retail Beer License.....	\$250.00
18	10. Mixed Beverage License.....	\$25.00
19	11. Mixed Beverage/Caterer Combination License.....	\$25.00
20	12. Caterer License.....	\$25.00
21	13. On-Premises Beer and Wine License.....	\$25.00
22	14. Annual Public Event License.....	\$25.00
23	15. Small Farm Winery License.....	\$25.00
24	16. Small Brewer License.....	\$35.00

1 17. Complimentary Beverage License..... \$25.00

2 The surcharge shall be paid concurrent with the licensee's
3 annual licensing fee and, in addition to Five Dollars (\$5.00) of the
4 employee license fee, shall be deposited in the Alcoholic Beverage
5 Governance Revolving Fund established pursuant to Section 5-128 of
6 this title.

7 H. Any license issued by the ABLE Commission under this title
8 may be relied upon by other licensees as a valid license, and no
9 other licensee shall have any obligation to independently determine
10 the validity of such license or be held liable solely as a
11 consequence of another licensee's failure to maintain a valid
12 license.

13 SECTION 3. AMENDATORY 37A O.S. 2021, Section 2-161, is
14 amended to read as follows:

15 Section 2-161. A. Retail spirit licensees may sell curbside
16 and deliver alcoholic beverages including beer, wine, and spirits in
17 sealed original containers to consumers aged twenty-one (21) years
18 and older as follows:

19 1. Only employees of the retail spirit licensee shall be
20 permitted to make alcoholic beverage product deliveries to
21 consumers;

22 2. Payment for alcoholic beverage product delivery by the
23 retail spirit licensee may be made by cash, check, transportable
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1 credit/debit card processors or advance ~~on-line~~ online payment
2 methods; and

3 3. The retail spirit licensee shall be responsible for his or
4 her delivery employees as provided in Section 2-133 of ~~Title 37A of~~
5 ~~the Oklahoma Statutes~~ this title.

6 B. Small brewers and small farm wineries licensed by the
7 Oklahoma ABLE Commission may sell curbside only alcoholic beverages
8 produced by such licensee in sealed original containers to consumers
9 aged twenty-one (21) years and older as follows:

10 1. Only employees of the licensed small brewer or small farm
11 winery shall be permitted to make alcoholic beverage product
12 deliveries to consumers;

13 2. Payment for alcoholic beverage product delivery by licensed
14 small brewers or small farm wineries may be made by cash, check,
15 transportable credit/debit card processors, or advance ~~on-line~~
16 online payment methods; and

17 3. Small brewers and small farm wineries shall be responsible
18 for their delivery employees as provided in Section 2-133 of ~~Title~~
19 ~~37A of the Oklahoma Statutes~~ this title.

20 C. Restaurants, bars and clubs holding mixed beverage, beer and
21 wine, or caterer/mixed beverage licenses issued by the Oklahoma ABLE
22 Commission may sell curbside and deliver only closed packages of
23 beer and wine to consumers aged twenty-one (21) years and older as
24 follows:

1 1. Only employees of such restaurant, bar or club licensee
2 shall be permitted to make alcoholic beverage package deliveries to
3 consumers;

4 2. Payment for alcoholic beverage package delivery by licensed
5 restaurants, bars and clubs may be made by cash, check,
6 transportable credit/debit card processors, or advance ~~on-line~~
7 online payment methods; and

8 3. Restaurants, bars and clubs licensed by the Oklahoma ABLE
9 Commission shall be responsible for their delivery employees as
10 provided in Section 2-133 of ~~Title 37A of the Oklahoma Statutes~~ this
11 title.

12 D. Grocery and convenience stores holding a retail beer and/or
13 retail wine license issued by the Oklahoma ABLE Commission may sell
14 curbside and deliver original sealed containers of beer and/or wine
15 only according to the license held to consumers aged twenty-one (21)
16 years and older as follows:

17 1. Only employees of such licensed grocery or convenience store
18 shall be permitted to make alcoholic beverage product deliveries to
19 consumers;

20 2. Payment for alcoholic beverage product delivery by a
21 licensed grocery or convenience store may be made by cash, check,
22 transportable credit/debit card processors or advance ~~on-line~~ online
23 payment methods; and

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1 3. Grocery and convenience store licensees shall be responsible
2 for their delivery employees as provided in Section 2-133 of Title
3 ~~37A of the Oklahoma Statutes~~ this title.

4 E. Licensees authorized by this section to make alcoholic
5 beverage product deliveries to consumers are prohibited from
6 utilizing third-party vendors or delivery services for purposes of
7 completing such product deliveries to consumers.

8 F. Licensees authorized by this section to make alcoholic
9 beverage product deliveries to consumers shall comply with the laws,
10 rules, procedures and executive orders incumbent on such licensee.

11 G. The Oklahoma ABLE Commission is authorized to promulgate
12 rules, regulations, forms and procedures necessary to implement and
13 enforce the provisions of this section.

14 H. For purposes of this section each delivery authorized by a
15 licensee to be made by his or her employee shall be deemed a direct
16 hand-to-hand sale as though the consumer was physically present on
17 the licensed premises and authorized by law by such licensee.

18 I. Notwithstanding any law or rule to the contrary, a delivery
19 service licensee, or an employee or independent contractor of a
20 delivery service licensee, in accordance with Section 1 of this act,
21 may transport and deliver alcoholic beverage products, including
22 curbside, from a retail beer or retail wine licensees to consumers
23 aged twenty-one (21) years and older for the consumer's personal use
24 and not for resale.

1 J. Employees or independent contractors of licensed grocery
2 stores or convenience stores or delivery service licensees shall be
3 permitted to make alcoholic beverage product deliveries to consumers
4 aged twenty-one (21) years and older for the consumer's personal use
5 and not for resale.

6 K. A delivery service licensee who is authorized by law and by
7 contractual agreement with a grocery or convenience store licensee
8 to deliver alcoholic beverage products to a consumer shall be held
9 responsible for violations of alcoholic beverage laws or
10 administrative rules of the ABLE Commission affecting his or her
11 license privilege to deliver alcoholic beverage products to
12 consumers.

13 SECTION 4. This act shall become effective July 1, 2023.

14 SECTION 5. It being immediately necessary for the preservation
15 of the public peace, health or safety, an emergency is hereby
16 declared to exist, by reason whereof this act shall take effect and
17 be in full force from and after its passage and approval.

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