NEW ALCOHOL LAWS EFFECTIVE OCTOBER 1, 2018

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by

Adam Marshall

Attorney/Shareholder, Barrow & Grimm, P.C.
Co-Founder & VP, Marshall Brewing Co.
Tulsa, OK
marshall@barrowgrimm.com
918-584-1600
Oklahoma Alcohol Law History

- **Oklahoma Prohibition at Statehood (1907)**
  - Oklahoma is the only state that came into the Union with a STATE constitutional provision for prohibition.
  - Ratification of the Oklahoma Constitution and statewide prohibition were separate questions on the ballot.
  - Oklahoma statehood Constitution ratified by 71% of voters
  - Statewide prohibition at statehood ratified by 54% of voters

- **Oklahoma Allows 3.2% ABW Beer (1933)**
  - U.S. 21\textsuperscript{st} Amendment sent to states for ratification (February 1933).
  - Oklahoma NEVER ratified the 21\textsuperscript{st} Amendment.
  - Federal Cullen-Harrison Act (March 1933) reclassified malt beverages with less than 3.2% ABW as “non-intoxicating beverages”, exempting them from the U.S. 18\textsuperscript{th} Amendment
  - In July of 1933, 63% of Oklahoma voters approved a state referendum reclassifying 3.2% beer as “non-intoxicating”.
Oklahoma Alcohol Law History (cont.)

- **Oklahoma Repeals Statewide Prohibition (1959)**
  - Campaign promise of Governor J. Howard Edmondson
  - April 7, 1959, 56% of voters repealed statewide prohibition
  - Only permitted sales for OFF-premises consumption.

- **Liquor-By-The-Drink (1984)**
  - September 18, 1984, Oklahomans voted to permit sales for ON-premises consumption on a county-option basis
  - As of June 26, 2018 - there are no more “dry” counties (i.e., did not have liquor-by-the-drink)

- **Oklahoma “Modernization” of Alcohol Laws (passed 2016, effective 2018)**
  - 65% of voters approved
  - All but 3 “dry” counties approved (there were 17 “dry” counties at the time of the 2016 vote)
Constitution & Statute Changes

- Article 28A of the Oklahoma Constitution (added by SQ 792)
  - Amends the Oklahoma Constitution, effective October 1, 2018
  - Effectively removes the distinction between low-point beer (3.2% ABW) and OK+ “strong” beer
  - Most changes for retail affect liquor stores (sales for OFF-premises consumption)
  - Permits wholesalers to acquire exclusive brand distribution rights from manufacturers
Constitution & Statute Changes (cont.)

- Title 37A of the Oklahoma Statutes (added by SB 383 during 2016 Session)
  - Statutory Companion to Article 28A of the Oklahoma Constitution
  - Effective October 1, 2018
- Not many changes to on-premises “mixed beverage” licenses
  - Premises “Main Purpose” Determination Changes
  - Discounted Sales (e.g., “Happy Hours”)
  - Required Employee Training
Constitution & Statute Changes (cont.)

- New ABLE Commission Administrative Rules (aka ABLE Regulations) found in Title 45 of the Oklahoma Administrative Code will go into effect on October 1, 2018.

- Revised generally to reflect new statutory changes.

- Three (3) new Chapters added: 15 (Employee Licenses, Training, Certification); 25 (Winemakers, Self-Distribution, Direct Shipment); and 35 (Events, Airline/Railroad, Hotel/Motel).

- Relevant Legislative Changes & “Cleanups” to SB 383

  - **SB 1334 (2018 Session)** - Amends the original ABLE Employee License training requirement passed under SB 383 to permit 14 days for an employee to attend training. Proof must be kept at the business location subject to inspection. Failure to complete training is a revocable offense for such license.
constitu & Statute Changes (cont.)

- Relevant Legislative Changes & “Cleanups” to SB 383 (cont.)

  - **SB 1336** (2018 Session) - Changes hours alcoholic beverages may NOT be sold, dispensed, served or consumed on the premises of a licensee. New times are NO sales between 2:00 am and 8:00 am (current “old” law is 2:00 am to 10:00 am), however, municipalities may enact ordinances requiring the premises to be closed to the public between the hours of 2:00 am to 6:00 am.

  - **SB 1499** (2018 Session) - Generally allows non-violent felons with convictions more than 5 years old to receive an ABLE employee license.

  - **SB 712** (2017 Session) - Concession Stand Exception. Amended 37A O.S. § 6-105. Added Paragraph 5.b. Provides an exception to the rule that “NO PERSON UNDER 21” can be in a designated bar area, provided, the designated bar area “is a concessions stand serving beer and wine, in addition to food and non-alcoholic beverages, which concession stand is located at, in, or on the premises of a sports, music or entertainment venue, convention center, fairgrounds or similar facility.”
Licensing (ON-premises)

- Elimination of OTC & County District Court Low-Point Beer Permits:
  - OTC Retail Dealer permit (on-premises) - no more $500 3-year permit fee
  - County district court low-point permit - no more $150 3-year permit fee

- ABLE Licenses (existing)
  - Mixed Beverage, Mixed Beverage/Caterer Combo, Public Event (Annual and One-time) - Fees Unchanged (e.g., license fee, admin fee, surcharge)
  - “Beer and Wine Licenses” becomes an “On-Premises Beer and Wine License” - Same fee / surcharge ($500/$25 initial; $450/$25 renewal); No “administrative fee” (only applies to Mixed Beverage and Mixed/Caterer Combo)
  - “Brewpub License” ($1,005 fee; no surcharge or admin fee)
**Operational Matters**

- **Premises Age Restrictions (37A O.S. § 6-114)**
  - "main purpose" determination for separate lounge or bar area (i.e., incidental sales of alcohol and premises age restrictions). NOT APPLICABLE TO CONCESSIONS STANDS.
  - Current “must exceed” standard replaced.
  - New standard – 35% or more of monthly gross sales attributable to food items (must have a “full kitchen” and “sell food items from a full menu”).
  - ABLE can ultimately designate the main purpose.
  - **Grandfathering:** Current licensees “shall not automatically lose” the main purpose designation just because their low-point beer becomes high point beer. ABLE has the burden to show “by clear and convincing evidence” that a grandfathered licensee no longer qualifies for a separate lounge or bar area (i.e., no one under 21 admitted to the premises).
Operational Matters (cont.)

- **Drink Services Limits (37A O.S. § 3-118 & § 6-102 4.a.)**
  - Cannot DELIVER more than 2 drinks to one person at one time.
  - Same as current law that applies to OK+ beer, wine, and spirits
  - IMPACT: NO MORE BUCKETS OF BEER served to one person.

- **Discounted Sales (37A O.S. § 3-118 & § 6-102 4.b.)**
  - “Drink Specials” are allowed but discounted sales CANNOT be for less than 6% markup of the cost.
  - May offer such “drink specials” on “any particular hour of any particular day” (no requirement to offer for an entire calendar week).
Operational Matters (cont.)

- **Gross Receipts Tax (37A O.S. § 5-105)**
  - 13.5% “Liquor Tax” on **ALL** beer.
  - Applies to: mixed beverage, caterer, on-premises beer and wine, public event, and special event licenses.

- **Sunday Sales (37A O.S. § 3-125)**
  - Continues ability for counties to restrict Sunday Sales (currently 37 O.S. § 591)
  - Low-point beer elimination means ZERO ON-premises beer sales on Sundays in counties with these restrictions.
Operational Matters (cont.)

- Employee Licenses (37A O.S. § 2-121)
  - Same basic requirements (e.g., required only of those who participate in the “service, mixing, or sale” of alcoholic beverages), PLUS
  - Must be “at least 18” to obtain an ABLE Employee License; AND

- TRAINING
  - “As a prerequisite to the issuance of an employee license, not later than fourteen (14) days after initial licensure, the first-time applicant shall be required to have successfully completed a training program conducted by the ABLE Commission, or by another entity approved by the ABLE Commission, including an in-house training program conducted by the employer.”

- Training requirement will only apply to new original (i.e., “first-time”) employee license. Renewals of currently licenses will not require training.

- Proof of training completion shall be available for inspection by the ABLE Commission at the business location employing the licensee. Failure of an employee licensee to comply with this section may constitute a revocable offense.
Operational Matters (cont.)

- Employee Licenses (cont.)
  - Training Program Certification (45 O.A.C. Ch. 15)
    - “Training Certification Application” currently available on the ABLE Commission’s website
    - Applicant must acknowledge a number of statements concerning the training program’s compliance with applicable laws and regulations
    - Copy of the proposed training curriculum must be submitted to the ABLE Commission (both a “digital” and a “hard copy”)
    - Must attend an ABLE Commission meeting to present the request for approval of the training program in person
    - Certification valid for 3 years
    - Must reapply if you alter your program or if you begin charging a program fee or raise the program fee
Operational Matters (cont.)

Employee License (cont.)

Who must have an employee license?

- All employees involved in the “service, mixing, or sale” of alcoholic beverages

EXCEPTIONS:

- Employees who do not participate in service, mixing, or sale of alcoholic beverages
- Employees of “special event,” “caterer, unless catering a mixed beverage-licensed premises,” or airline/railroad beverage licensees

NOTE: Managers of a mixed beverage, public event or bottle club licensee MUST have a license regardless of whether they participate in service, mixing, or sale.
Operational Matters (cont.)

Events

“Private Event” - “a social gathering or event attended by invited guests who share a common cause, membership, business or task and have a prior established relationship.” Also, “advertisement for general public attendance or sales of tickets to the general public shall not constitute a private event.” (37A O.S. § 1-103 44.)

“Public Event” - “any event that can be attended by the general public.” (37A O.S. § 1-103 45.)

“Special Event” - “an entertainment, recreation or marketing event that occurs at a single location on an irregular basis at which alcoholic beverages are sold.” (37A O.S. § 1-103 57.)

Public Event vs. Special Event LICENSES

Public Event - Events 3 days or less; one-time or annual (6 events in 1 year)

Special Event - Events 10 days or less; annual (4 events in 1 year), quarterly (3 events in 3 months)

Issued to organization/association/nonprofit organized for political, fraternal, charitable, religious or social purposes

May not be issued to premises already licensed by ABLE
Operational Matters (cont.)

Events (cont.)

Charitable Events (37A. O.S. § 2-129)

- Events 4 days or less. Maximum of 8 licenses per year.
- Issued to tax-exempt organizations (e.g., 501(c) organizations).
- Authorizes wine, beer, and/or spirits tasting, dinner, auction.
- Alcohol may be purchased or donated.
- No special event license needed.
- May use a licensed caterer to provide additional alcohol service.

Festivals

- Licenses for festivals depend upon organization conducting festival and nature of alcoholic beverage service.
- If a festival premises is licensed, no other licenses may operate on premises, except for a caterer.
  - E.g., small brewers and wineries may sell and serve direct to consumers at festivals but not on premises already licensed.
Operational Matters (cont.)

Hotel Bar and “Suite Shop” Issues

Hotel “Suite Shops” currently selling low-point beer will need to obtain a Retail Beer License to sell packaged beer (e.g., bottles, cans) up to 8.99% ABV, and/or a Retail Wine License to sell packaged wine up to 15% ABV.

“Packaged” is beer/wine packaged for off-premises consumption.

A hotel guest room is considered off-premises for consumption purposes.

Cannot have both an on-premises license (e.g., mixed beverage held by a hotel bar) and an off-premises license (e.g., retail beer and/or retail wine license for a “suite shop”) “situated within or adjacent to the same physical space wherein the on-premises license is maintained” (37A. O.S. § 2-146 A.16.).
Supply/Distribution

- Reorganization of Wholesale “Tier”
- Beer
  - “Beer Distributor” (formerly “Class B Wholesaler” and/or “Wholesaler” of low-point beer)
  - Interim Beer Distributor licenses (interim license application are available on ABLE’s website)
    - Exclusive distribution territories for beer.
    - Beer manufacturers may sell to beer distributors on or after September 1, 2018.
  - “Small Brewer Self-Distribution License” holder (breweries producing less than 65,000 barrels of beer annually)
Supply/Distribution (cont.)

- **Wine and Spirits**
  - “Wine and Spirits Wholesaler” (formerly “Wholesaler”)
  - **BIG CONSTITUTIONAL CHANGE** - Wine and spirits manufacturers “may sell” to any licensed wholesaler (opens the door for exclusive wholesaler relationships).
  - Wholesalers may purchase direct from manufacturers OR through nonresident sellers.
  - Business likely with multiple Wholesalers with exclusive items.
  - Interim Wine and Spirits Wholesale licenses may be obtained.
  - “Winemaker Self-Distribution License” holder (winemakers that produce no more than 15,000 gallons of wine annually)
Other Issues

- **Infusions** (e.g. “blueberry-infused vodka,” “habanero tequila,” etc.)
  - **Current Requirement (per ABLE Declaratory Ruling date 6/15/16)**
    - Infusions must be made in a non-alcoholic beverage container, and subsequently served from that container to the customer.
  - **New Requirements (37A O.S. § 5-133)**
    - Must be on mixed beverage premises
    - Maximum container size is 5 gallons and a “lid is required”
    - Not aged more than 14 days
    - Consumed within 21 days after aging is complete
    - “Container cleaning report” must be kept and made available to ABLE
    - Label container with:
      - “Base alcohol used”
      - Date infusion process will be completed
      - Date product must be destroyed
Question and Comments
Thank You!

Adam Marshall

Attorney/Shareholder, Barrow & Grimm, P.C.
Co-Founder & VP, Marshall Brewing Co.
Tulsa, OK
marshall@barrowgrimm.com
918-584-1600