

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 337

By: Williams (Don) of the  
Senate

and

Kinnamon of the House

COMMITTEE SUBSTITUTE

An Act relating to intoxicating liquors; stating legislative declaration; providing short title; creating Nonintoxicating Beverage Distribution Act; providing for statutory regulation of sales and distribution of certain beverages; specifying duties of licensed manufacturer of nonintoxicating beverages; specifying restrictions on transportation of nonintoxicating beverages sold by licensed wholesaler; specifying duties of licensed wholesaler; specifying duties of licensed wholesaler of nonintoxicating beverages; prohibiting delivery, receipt or storage of nonintoxicating beverages at certain locations; allowing certain sales of designated brands if wholesaler unable to provide such brands; requiring that beverages come into physical possession of licensed wholesaler and specifying restrictions on unloading and distributions; providing for termination, cancellation or refusal to continue to provide designated brands under certain circumstances; requiring Oklahoma Tax Commission to develop and adopt certain rules and regulations; providing for certain persons to have cause of action; providing for recovery of damages and obtaining injunctive relief; providing penalties; 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 163.18A of Title 37, unless there is created a duplication in numbering, reads as follows:

A. In order to provide for regulation of the sales and distribution of nonintoxicating beverages, as defined in Section 163.2 of Title 37 of the Oklahoma Statutes, in this state, the Legislature hereby declares it is necessary to implement the provisions of the Nonintoxicating Beverage Distribution Act.

Sections 1 through 8 of this act shall be known and may be cited as the "Nonintoxicating Beverage Distribution Act".

B. Statutory regulation of the sales and distribution of designated brands in designated territories by wholesalers shall include, but not be limited to:

1. A requirement for written agreements between a manufacturer and wholesaler designating a specific territory within which the wholesaler may sell the designated brands of the manufacturer;

2. Provisions for prohibited acts applicable to the wholesaler and manufacturer; and

3. Provisions for penalties for violations of the provisions of the Nonintoxicating Beverage Distribution Act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 163.18B of Title 37, unless there is created a duplication in numbering, reads as follows:

Every manufacturer of nonintoxicating beverages licensed by the Oklahoma Tax Commission authorizing the licensee to sell its nonintoxicating beverages in this state shall:

1. Enter into an agreement with a licensed wholesaler to sell the designated brands of the licensed manufacturer which designates the sales territory of that licensed wholesaler and the designated brands to be sold by the licensed wholesaler. All such agreements shall specifically authorize the sale of the designated brands by a licensed wholesaler within that sales territory;

2. Sell its registered and approved designated brands only to a licensed wholesaler with whom that licensed manufacturer has an agreement designating the sales territory of the licensed wholesaler and the designated brands to be sold by the licensed wholesaler; and

3. Designate who is responsible for the distribution of its designated brands.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 163.18C of Title 37, unless there is created a duplication in numbering, reads as follows:

In order to regulate distribution of nonintoxicating beverages in this state, and assure collection of all applicable taxes and fees, all nonintoxicating beverages sold in this state by a licensed wholesaler shall only be transported within this state to the licensed address and location of a licensed retailer or between the licensed addresses and locations of licensed retailers by a marked conveyance owned or leased by a licensed wholesaler.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 163.18D of Title 37, unless there is created a duplication in numbering, reads as follows:

A. A licensed wholesaler designated as the licensed wholesaler for a nonintoxicating beverage within a designated sales territory shall present that nonintoxicating beverage for sale to all licensed retailers within the designated sales territory without discrimination. A licensed wholesaler shall not sell, supply, or deliver either directly or indirectly through a third party, a nonintoxicating beverage to a licensed retailer outside of the designated sales territory of the designated wholesaler, nor to any person the licensed wholesaler has reason to believe will sell or supply any quantity of the nonintoxicating beverage to any retail location outside of the designated sales territory of the designated wholesaler.

B. All nonintoxicating beverages shall only be transported by a marked conveyance owned or leased by the licensed wholesaler and operated by the licensed wholesaler or an employee of the wholesaler for the products of a licensed manufacturer within the designated sales territory to the address and location of a licensed retail dealer within that designated sales territory.

C. Any nonintoxicating beverages sold by the licensed wholesaler shall not be delivered to, received by, or stored at any place other than the address and location of the licensed retailer for which state and local retail dealer licenses and permits have been issued.

D. With the approval of the licensed manufacturer, a licensed wholesaler may sell the designated brands to a licensed retailer located in a designated sales territory of another licensed

wholesaler if that licensed wholesaler is temporarily unable for any reason to provide the designated brands of the licensed manufacturer within its designated sales territory.

E. All nonintoxicating beverages purchased by a licensed wholesaler for resale in this state shall physically come into the possession of the licensed wholesaler and be unloaded in and distributed from the licensed warehouse of the licensed wholesaler located in this state, prior to being resold in this state.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 163.18E of Title 37, unless there is created a duplication in numbering, reads as follows:

A licensed manufacturer may terminate, cancel, or refuse to continue to provide designated brands pursuant to a designated sales territory agreement with any licensed wholesaler who has sold nonintoxicating beverages supplied by that licensed manufacturer in violation of the provisions of the Nonintoxicating Beverage Distribution Act. Such termination, cancellation, or refusal to supply shall be effective immediately upon receipt of written notification by the offending licensed wholesaler.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 163.18F of Title 37, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Tax Commission shall be responsible for developing and adopting rules and regulations for implementing the provisions of Sections 163.1 through 163.20, 163.22 through 163.25, and 231 of Title 37 of the Oklahoma Statutes, and Sections 1 through 8 of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 163.18G of Title 37, unless there is created a duplication in numbering, reads as follows:

Any aggrieved person shall have a cause of action for violations of the provisions of the Nonintoxicating Beverage Distribution Act and may recover damages or obtain injunctive relief or both.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 163.18H of Title 37, unless there is created a duplication in numbering, reads as follows:

A. In addition to any other powers conferred on the Oklahoma Tax Commission to impose penalties for violations of Sections 163.1 through 163.25 of Title 37 of the Oklahoma Statutes whenever in the judgment of the Commission any person has committed an act which constitutes a violation of the Nonintoxicating Beverage Distribution Act, the Commission may:

1. After notice and hearing, issue a cease and desist order to any person that is licensed as a manufacturer or wholesaler;

2. Impose a fine of not more than Five Thousand Dollars (\$5,000.00) for each violation in the event that after the issuance of an order to cease and desist the illegal activity, the person that the order is directed to commits any act in violation of the order; and

3. Make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the Commission that such violations have occurred, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court, without bond.

B. Each day a violation is continuing shall constitute a separate offense.

C. Administrative fines imposed pursuant to the provisions of this section shall be enforceable in the district courts of this state.

D. All administrative fines collected by the Commission pursuant to the provisions of this section shall be forwarded to the State Treasurer for deposit in the General Revenue Fund.

E. Any manufacturer or wholesaler injured by a violation of the Nonintoxicating Beverage Distribution Act may:

1. Bring an action for recovery of damages. Judgment shall be entered for actual damages plus reasonable attorney's fees and costs; and

2. Bring an action to restrain and enjoin the violation of the Nonintoxicating Beverage Distribution Act.

SECTION 9. This act shall become effective September 1, 1993.

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