

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 1146 By: Jolley of the Senate  
3 and  
4 Jackson of the House  
5  
6  
7

8 ( intoxicating liquors - Low-Point Beer Distribution  
9 Act -  
10 emergency )  
11  
12

13 AMENDMENT NO. 1. Strike the stricken title, enacting clause and  
14 entire bill and insert

15 "An Act relating to intoxicating liquors; amending 37  
16 O.S. 2001, Sections 163.2 and 163.18E, which relate  
17 to low-point beer and the Low-Point Beer  
18 Distribution Act; adding definitions; providing  
19 exemption; prohibiting the termination of certain  
20 agreements between certain manufacturers and  
21 wholesalers unless certain conditions are met;  
22 providing certain exceptions; providing for when  
23 such termination is null and void; providing reasons  
24 for such termination; authorizing termination;  
requiring certain notice; providing procedures for  
transfer of a particular brand of low-point beer  
from a manufacturer to a successor manufacturer;  
making a successor manufacturer obligated to certain  
terms and conditions; making certain provisions  
applicable; giving a successor manufacturer certain  
right to contractually require a wholesaler to  
comply with certain standards of performance;  
allowing certain termination agreement for certain

1 purpose under certain circumstances; requiring  
2 certain notice; providing for certain negotiations  
3 on fair market value; authorizing certain  
4 distribution under certain circumstances; providing  
5 for certain arbitration; providing for notice of  
6 arbitration, conclusion, location, arbitrator,  
7 award, cost and written decision; making certain  
8 decision final and binding; providing for  
9 enforcement of award; prohibiting certain appeal;  
10 providing for nonparticipation in arbitration;  
11 authorizing certain actions if settlement or award  
12 is not paid; prohibiting certain wholesaler from  
13 receiving certain award or settlement; providing for  
14 recovery of damages for certain violations and  
15 settlement of certain disputes; construing  
16 provisions; prohibiting certain waiver compliance;  
17 making act applicable to certain agreements or  
18 contracts; and declaring an emergency.

19  
20  
21  
22  
23  
24  
BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 37 O.S. 2001, Section 163.2, is  
amended to read as follows:

Section 163.2 In the administration of Section 163.1 et seq. of  
this title, the following words and phrases are given the meanings  
respectively indicated:

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

1           2. "Person" means and includes an individual, a trust or  
2 estate, a partnership, an association or a corporation;

3           3. "Manufacturer" means and includes any person who prepares  
4 for human consumption by the use of raw materials or other  
5 ingredients any low-point beer, as defined herein, upon which a  
6 license fee and a tax are imposed by any law of this state;

7           4. "Wholesaler" means and includes any person who sells any  
8 low-point beer, as defined herein, to a licensed retail dealer, as  
9 hereinafter defined, for resale;

10          5. "Retail dealer" means and includes any person who sells any  
11 low-point beer, as defined herein, at retail for consumption or use,  
12 and such definitions include state and county fair associations, and  
13 special licenses may be issued for the sale of low-point beer, as  
14 herein defined, by such associations, and to other persons for the  
15 sale of such low-point beer at rodeos, picnics, or other organized  
16 temporary assemblages of people. The term "retail dealer" also  
17 includes railways for the sale of such beverages, and licenses may  
18 be issued for each dining car or railway train, which railways and  
19 dining cars shall pay the same license fees as regular retail  
20 dealers;

21          6. "Sale" or "sales", for the purpose of the collection of the  
22 taxes imposed by any law of the state upon low-point beer, as  
23 defined herein, is hereby defined to mean and include all sales by  
24 all wholesalers within this state, for money or any other valuable

1 consideration, to retail dealers for resale; and, also, the term  
2 "sale" or "sales" taxable under Section 163.1 et seq. of this title  
3 means and includes all sales from manufacturers or wholesalers from  
4 outside this state, to retail dealers for resale to consumers or  
5 otherwise. The term "sale" or "sales" shall also include sales from  
6 manufacturers without the state to wholesalers located within the  
7 state;

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

13 8. "Motion picture theater" means a place where motion pictures  
14 are exhibited and to which the general public is admitted, but does  
15 not include a place where meals, as defined by this section, are  
16 served, if only persons twenty-one (21) years of age or older are  
17 admitted;

18 9. "Existing wholesaler" means a wholesaler who distributes a  
19 particular brand of low-point beer at the time a successor  
20 manufacturer acquires rights to manufacture or import the particular  
21 brand of low-point beer;

22 10. "Fair market value" means the value that would be  
23 determined in a transaction entered into without duress or threat of

24

1 termination of the existing wholesaler's right and shall include all  
2 elements of value, including goodwill and going-concern value;

3 11. "Good cause" means:

4 a. failure by the wholesaler to comply with the  
5 provisions of a written agreement or understanding  
6 with the manufacturer, or

7 b. failure by the wholesaler to comply with the duty of  
8 good faith;

9 12. "Good faith" means the duty of each party to any franchise  
10 and all officers, employees or agents thereof to act with honesty in  
11 fact and within reasonable standards of fair dealing in the trade;

12 13. "Successor manufacturer" means a primary source of supply,  
13 a brewer or an importer that acquires rights to a low-point beer  
14 brand from a predecessor manufacturer; and

15 14. "Successor wholesaler" means one or more wholesalers  
16 designated by a successor manufacturer to replace the existing  
17 wholesaler, for all or part of the existing wholesaler's territory,  
18 in the distribution of the existing low-point beer brand or brands.

19 SECTION 2. AMENDATORY 37 O.S. 2001, Section 163.18E, is  
20 amended to read as follows:

21 Section 163.18E ~~A licensed A.~~ Nothing in this section shall  
22 apply to a manufacturer that produces less than three hundred  
23 thousand (300,000) gallons of low-point beer per calendar year.

1        B. 1. Except as provided in subsections C, D and E of this  
2 section, no manufacturer may shall terminate, cancel, or refuse to  
3 continue to provide designated brands pursuant to a designated sales  
4 territory an agreement with any licensed wholesaler who has sold  
5 low point beer supplied by that licensed manufacturer in violation  
6 of the provisions of the Low Point Beer Distribution Act. Such  
7 termination, cancellation, or refusal to supply shall be effective  
8 immediately upon receipt of written notification by the offending  
9 licensed wholesaler unless all of the following occur:

10        a. the manufacturer establishes good cause for such  
11        termination,

12        b. the wholesaler receives written notification by  
13        certified mail, return receipt requested, from the  
14        manufacturer of the alleged noncompliance and is  
15        afforded no less than sixty (60) days in which to cure  
16        such noncompliance,

17        c. the wholesaler fails to cure such noncompliance within  
18        the allotted cure period, and

19        d. the manufacturer provides written notice by certified  
20        mail, return receipt requested, to the wholesaler of  
21        such continued noncompliance. The notification shall  
22        contain a statement of the intention of the  
23        manufacturer to terminate or not renew the agreement,

1 the reasons for termination or nonrenewal and the date  
2 the termination or nonrenewal shall take effect.

3 2. If a wholesaler cures an alleged noncompliance within the  
4 cure period provided in subparagraph b of paragraph 1 of this  
5 subsection, any notice of termination from a manufacturer to a  
6 wholesaler shall be null and void.

7 C. A manufacturer may immediately terminate an agreement with a  
8 wholesaler, effective upon furnishing written notification to the  
9 wholesaler by certified mail, return receipt requested, for any of  
10 the following reasons:

11 1. The wholesaler's failure to pay any account when due and  
12 upon written demand by the manufacturer for such payment, in  
13 accordance with agreed payment terms;

14 2. The assignment or attempted assignment by the wholesaler for  
15 the benefit of creditors, the institution of proceedings in  
16 bankruptcy by or against the wholesaler, the dissolution or  
17 liquidation of the wholesaler or the insolvency of the wholesaler;

18 3. The revocation or suspension of, or the failure to renew for  
19 a period of more than fourteen (14) days, a wholesaler's state,  
20 local or federal license or permit to sell low-point beer in this  
21 state;

22 4. Failure of a wholesaler to sell his or her ownership  
23 interest in the distribution rights to the manufacturer's low-point  
24 beer within one hundred twenty (120) days after such a wholesaler

1 has been convicted of a felony that, in the manufacturer's sole  
2 judgment, adversely affects the goodwill of the wholesaler or  
3 manufacturer;

4 5. A wholesaler has been convicted of, found guilty of or pled  
5 guilty or nolo contendere to, a charge of violating a law or  
6 regulation of the United States or of this state if it materially  
7 and adversely affects the ability of the wholesaler or manufacturer  
8 to continue to sell its low-point beer in this state;

9 6. Any attempted transfer of ownership of the wholesaler, stock  
10 of the wholesaler or stock of any parent corporation of the  
11 wholesaler, or any change in the beneficial ownership or control of  
12 any entity, without obtaining the prior written approval of the  
13 manufacturer, except as may otherwise be permitted pursuant to a  
14 written agreement between the parties;

15 7. Fraudulent conduct in the wholesaler's dealings with the  
16 manufacturer or its low-point beer, including the intentional sale  
17 of low-point beer outside the manufacturer's established quality  
18 standards;

19 8. The wholesaler ceases to conduct business for five (5)  
20 consecutive business days, unless conducting the business is  
21 prevented or rendered impractical due to events beyond the  
22 wholesaler's reasonable control as a result of an act of God, an  
23 insured casualty, war, or a condition of national, state or local  
24 emergency; or



1       9. Any sale of low-point beer, directly or indirectly, to  
2 customers located outside the territory assigned to the wholesaler  
3 by the manufacturer unless expressly authorized by the manufacturer.

4       D. The manufacturer shall have the right to terminate an  
5 agreement with a wholesaler at any time by giving the wholesaler at  
6 least ninety (90) days' written notice by certified mail, return  
7 receipt requested; provided, that the manufacturer shall give a  
8 similar notice to all other wholesalers in all other states who have  
9 entered into the same distribution agreement with the manufacturer.

10       E. If a particular brand of low-point beer is transferred by  
11 purchase or otherwise from a manufacturer to a successor  
12 manufacturer, the following shall occur:

13       1. The successor manufacturer shall become obligated to all of  
14 the terms and conditions of the agreement in effect on the date of  
15 succession. This subsection applies regardless of the character or  
16 form of the succession. A successor manufacturer has the right to  
17 contractually require its wholesaler to comply with operational  
18 standards of performance, if the standards are uniformly established  
19 for all of the successor manufacturer's wholesalers. A successor  
20 manufacturer may, upon written notice, terminate its agreement, in  
21 whole or in part, with a wholesaler of the manufacturer it  
22 succeeded, for the purpose of transferring the distribution rights  
23 in the wholesaler's territory to a new wholesaler, provided that the  
24 successor wholesaler first pays to the existing wholesaler the fair

1 market value of the existing wholesaler's business with respect to  
2 the terminated brand or brands;

3 2. If the successor manufacturer decides to terminate its  
4 agreement with the existing wholesaler for purposes of transfer, the  
5 successor manufacturer shall notify the existing wholesaler in  
6 writing of the successor manufacturer's intent not to appoint the  
7 existing wholesaler for all or part of the existing wholesaler's  
8 territory for the low-point beer. The successor manufacturer shall  
9 mail the notice of termination by certified mail, return receipt  
10 requested, to the existing wholesaler. The successor manufacturer  
11 shall include in the notice the names, addresses and telephone  
12 numbers of the successor wholesaler or wholesalers;

13 3. a. The successor wholesaler shall negotiate with the  
14 existing wholesaler to determine the fair market value  
15 of the existing wholesaler's right to distribute the  
16 low-point beer in the existing wholesaler's territory.

17 The successor wholesaler and the existing wholesaler  
18 shall negotiate the fair market value in good faith.

19 b. The existing wholesaler shall continue to distribute  
20 the low-point beer in good faith until payment of the  
21 compensation agreed to under subparagraph a of this  
22 paragraph, or awarded under paragraph 4 of this  
23 subsection, is received; and

1        4. a. If the successor wholesaler and the existing  
2                    wholesaler fail to reach a written agreement on the  
3                    fair market value within thirty (30) days after the  
4                    existing wholesaler receives the notice required  
5                    pursuant to paragraph 2 of this subsection, the  
6                    successor wholesaler or the existing wholesaler shall  
7                    send a written notice to the other party requesting  
8                    arbitration pursuant to the Uniform Arbitration Act,  
9                    Part 2 of Article 22 of Title 13, C.R.S. Arbitration  
10                   shall be held for the purpose of determining the fair  
11                   market value of the existing wholesaler's right to  
12                   distribute the low-point beer in the existing  
13                   wholesaler's territory.

14        b. Notice of intent to arbitrate shall be sent, as  
15                   provided in subparagraph a of this paragraph, not  
16                   later than forty (40) days after the existing  
17                   wholesaler receives the notice required pursuant to  
18                   paragraph 2 of this subsection. The arbitration  
19                   proceeding shall conclude not later than sixty (60)  
20                   days after the date the notice of intent to arbitrate  
21                   is mailed to a party, unless this time is extended by  
22                   mutual agreement of the parties and the arbitrator.

23        c. Any arbitration held pursuant to this subsection shall  
24                   be conducted in a city within this state that:

1           (1) is closest to the existing wholesaler, and  
2           (2) has a population of more than twenty thousand  
3           (20,000) people.

4       d. Any arbitration held pursuant to this paragraph shall  
5       be conducted before one impartial arbitrator to be  
6       selected by the American Arbitration Association or  
7       its successor. The arbitration shall be conducted in  
8       accordance with the rules and procedures of the  
9       Uniform Arbitration Act, Part 2 of Article 22 of Title  
10       13, C.R.S.

11       e. An arbitrator's award in any arbitration held pursuant  
12       to this paragraph shall be monetary only and shall not  
13       enjoin or compel conduct. Any arbitration held  
14       pursuant to this paragraph shall be in lieu of all  
15       other remedies and procedures.

16       f. The cost of the arbitrator and any other direct costs  
17       of an arbitration held pursuant to this paragraph  
18       shall be equally divided by the parties engaged in the  
19       arbitration. All other costs shall be paid by the  
20       party incurring them.

21       g. The arbitrator in any arbitration held pursuant to  
22       this paragraph shall render a written decision not  
23       later than thirty (30) days after the conclusion of  
24       the arbitration, unless this time is extended by

1 mutual agreement of the parties and the arbitrator.  
2 The decision of the arbitrator is final and binding on  
3 the parties. The arbitrator's award may be enforced  
4 by commencing a civil action in any court of competent  
5 jurisdiction. Under no circumstances may the parties  
6 appeal the decision of the arbitrator.

7 h. An existing wholesaler or successor wholesaler who  
8 fails to participate in the arbitration hearings in  
9 any arbitration held pursuant to this paragraph waives  
10 all rights the existing wholesaler or successor  
11 wholesaler would have had in the arbitration and is  
12 considered to have consented to the determination of  
13 the arbitrator.

14 i. If the existing wholesaler does not receive payment  
15 from the successor wholesaler of the settlement or  
16 arbitration award required under paragraph 2 or 3 of  
17 this subsection within thirty (30) days after the date  
18 of the settlement or arbitration award:

19 (1) the existing wholesaler shall remain the  
20 wholesaler of the low-point beer in the existing  
21 wholesaler's territory to at least the same  
22 extent that the existing wholesaler distributed  
23 the low-point beer immediately before the

1 successor manufacturer acquired rights to the  
2 low-point beer, and

3 (2) the existing wholesaler is not entitled to the  
4 settlement or arbitration award.

5 F. 1. Any wholesaler or manufacturer who is aggrieved by a  
6 violation of any provision of subsections B and D of this section  
7 shall be entitled to recovery of damages caused by the violation.  
8 Except for a dispute arising under subsection E of this section,  
9 damages shall be sought in a civil action in any court of competent  
10 jurisdiction.

11 2. Any dispute arising under subsections B and D of this  
12 section may also be settled by such dispute resolution procedures as  
13 may be provided by a written agreement between the parties.

14 G. Nothing in this section shall be construed to limit or  
15 prohibit good-faith settlements voluntarily entered into by the  
16 parties.

17 H. Nothing in this section shall be construed to give an  
18 existing wholesaler or a successor wholesaler any right to  
19 compensation if an agreement with the existing wholesaler or  
20 successor wholesaler is terminated by a successor manufacturer  
21 pursuant to subsections B, C and D of this section.

22 I. No manufacturer shall require any wholesaler to waive  
23 compliance with any provision of this section.

