

THE STATE SENATE  
Monday, February 23, 2009

Committee Substitute for  
Senate Bill No. 1146

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1146 - By: Jolley of the Senate and Jackson of the House.

[ intoxicating liquors - Low-Point Beer Distribution Act - emergency ]

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;

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

3. "Manufacturer" means and includes any person who prepares for human consumption by the use of raw materials or other

1 ingredients any low-point beer, as defined herein, upon which a  
2 license fee and a tax are imposed by any law of this state;

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

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

17 6. "Sale" or "sales", for the purpose of the collection of the  
18 taxes imposed by any law of the state upon low-point beer, as  
19 defined herein, is hereby defined to mean and include all sales by  
20 all wholesalers within this state, for money or any other valuable  
21 consideration, to retail dealers for resale; and, also, the term  
22 "sale" or "sales" taxable under Section 163.1 et seq. of this title  
23 means and includes all sales from manufacturers or wholesalers from

1 outside this state, to retail dealers for resale to consumers or  
2 otherwise. The term "sale" or "sales" shall also include sales from  
3 manufacturers without the state to wholesalers located within the  
4 state;

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

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

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

19 10. "Fair market value" means the value that would be  
20 determined in a transaction entered into without duress or threat of  
21 termination of the existing wholesaler's right and shall include all  
22 elements of value, including goodwill and going-concern value;

23 11. "Good cause" means:



1 ~~continue to provide designated brands pursuant to a designated sales~~  
2 ~~territory an agreement with any licensed wholesaler who has sold~~  
3 ~~low point beer supplied by that licensed manufacturer in violation~~  
4 ~~of the provisions of the Low Point Beer Distribution Act. Such~~  
5 ~~termination, cancellation, or refusal to supply shall be effective~~  
6 ~~immediately upon receipt of written notification by the offending~~  
7 ~~licensed wholesaler unless all of the following occur:~~

8       a. the manufacturer establishes good cause for such  
9           termination,

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

15       c. the wholesaler fails to cure such noncompliance within  
16           the allotted sixty-day cure period, and

17       d. the manufacturer provides written notice by certified  
18           mail, return receipt requested, to the wholesaler of  
19           such continued failure to comply with the agreement.  
20           The notification shall contain a statement of the  
21           intention of the manufacturer to terminate or not  
22           renew the agreement, the reasons for termination or

1                   nonrenewal and the date the termination or nonrenewal  
2                   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

1 beer within one hundred twenty (120) days after such a wholesaler  
2 has been convicted of a felony that, in the manufacturer's sole  
3 judgment, adversely affects the goodwill of the wholesaler or  
4 manufacturer;

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

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

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

20 8. The wholesaler ceases to conduct business for five (5)  
21 consecutive business days, unless such cessation is the result of an  
22 act of God, war, or a condition of national, state or local  
23 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 terminate its agreement, in whole or in part, with  
21 a wholesaler of the manufacturer it succeeded, for the purpose of  
22 transferring the distribution rights in the wholesaler's territory  
23 to a new wholesaler, provided that the successor wholesaler first

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

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

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

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

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



- 1            c. Any arbitration held pursuant to this subsection shall  
2            be conducted in a city within this state that:  
3            (1) is closest to the existing wholesaler, and  
4            (2) has a population of more than twenty thousand  
5            (20,000) according to the latest Federal  
6            Decennial Census.
- 7            d. Any arbitration held pursuant to this paragraph shall  
8            be conducted before one impartial arbitrator to be  
9            selected by the American Arbitration Association or  
10           its successor. The arbitration shall be conducted in  
11           accordance with the rules and procedures of the  
12           Uniform Arbitration Act, part 2 of article 22 of title  
13           13, C.R.S.
- 14           e. An arbitrator's award in any arbitration held pursuant  
15           to this paragraph shall be monetary only and shall not  
16           enjoin or compel conduct. Any arbitration held  
17           pursuant to this paragraph shall be in lieu of all  
18           other remedies and procedures.
- 19           f. The cost of the arbitrator and any other direct costs  
20           of an arbitration held pursuant to this paragraph  
21           shall be equally divided by the parties engaged in the  
22           arbitration. All other costs shall be paid by the  
23           party incurring them.

- 1           g. The arbitrator in any arbitration held pursuant to  
2           this paragraph shall render a written decision not  
3           later than thirty (30) days after the conclusion of  
4           the arbitration, unless this time is extended by  
5           mutual agreement of the parties and the arbitrator.  
6           The decision of the arbitrator is final and binding on  
7           the parties. The arbitrator's award may be enforced  
8           by commencing a civil action in any court of competent  
9           jurisdiction. Under no circumstances may the parties  
10           appeal the decision of the arbitrator.
- 11           h. An existing wholesaler or successor wholesaler who  
12           fails to participate in the arbitration hearings in  
13           any arbitration held pursuant to this paragraph waives  
14           all rights the existing wholesaler or successor  
15           wholesaler would have had in the arbitration and is  
16           considered to have consented to the determination of  
17           the arbitrator.
- 18           i. If the existing wholesaler does not receive payment  
19           from the successor wholesaler of the settlement or  
20           arbitration award required under paragraph 2 or 3 of  
21           this subsection within thirty (30) days after the date  
22           of the settlement or arbitration award:

- 1                   (1) the existing wholesaler shall remain the  
2                   wholesaler of the low-point beer in the existing  
3                   wholesaler's territory to at least the same  
4                   extent that the existing wholesaler distributed  
5                   the low-point beer immediately before the  
6                   successor wholesaler acquired rights to the low-  
7                   point beer, and  
8                   (2) the existing wholesaler is not entitled to the  
9                   settlement or arbitration award.

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

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

19           G. Nothing in this section shall be construed to limit or  
20 prohibit good-faith settlements voluntarily entered into by the  
21 parties.

22           H. Nothing in this section shall be construed to give an  
23 existing wholesaler or a successor wholesaler any right to

1 compensation if an agreement with the existing wholesaler or  
2 successor wholesaler is terminated by a successor manufacturer  
3 pursuant to subsections B, C and D of this section.

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

6 J. This section shall apply to any agreement entered into, and  
7 any renewals, extensions, amendments, or conduct constituting a  
8 modification of an agreement, by a manufacturer on or after the  
9 effective date of this act.

10 SECTION 3. It being immediately necessary for the preservation  
11 of the public peace, health and safety, an emergency is hereby  
12 declared to exist, by reason whereof this act shall take effect and  
13 be in full force from and after its passage and approval.

14 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS & LABOR, dated 2-16-09 -  
15 DO PASS, As Amended and Coauthored.