

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 COMMITTEE SUBSTITUTE  
4 FOR  
5 SENATE BILL NO. 690

By: Jolley

6  
7 COMMITTEE SUBSTITUTE

8 An Act relating to intoxicating liquors; defining  
9 terms; prohibiting certain termination of  
10 distribution agreement with nonresident brewer;  
11 providing conditions for termination of agreement;  
12 requiring notice for certain terminations; providing  
13 certain cure period; stating reasons for immediate  
14 termination; providing procedure for beer brand  
15 transfer to successor; allowing successor to  
16 terminate agreement upon certain conditions;  
17 requiring good faith distribution until certain time;  
18 providing procedure to failure to reach agreement  
19 with successor; authorizing arbitration; stating  
20 arbitration procedure; providing for determination of  
21 fair market value; setting time requirements for  
22 arbitration; providing for right to be waived for  
23 failure to participate; establishing procedure to  
24 nonpayment of settlement or arbitration award;  
construing change in laws or constitution of this  
state on agreements; requiring certain notice of  
termination; permitting dispute resolution for  
certain actions; construing good faith settlements;  
restricting required compliance or waiver of rights;  
prohibiting inducements for agreements; including  
modifications to agreements; amending 37 O.S. 2011,  
Section 524, as amended by Section 2, Chapter 382,  
O.S.L. 2013 (37 O.S. Supp. 2014, Section 524), which  
relates to nonresident seller license; providing for  
certain brewer and nonresident sellers to have  
written distribution agreement; making certain  
agreements subject to inspection by ABLE Commission;  
making gender neutral; providing for codification;  
providing an effective date; and declaring an  
emergency.

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 SECTION 1. NEW LAW A new section of law to be codified  
3 in the Oklahoma Statutes as Section 525A of Title 37, unless there  
4 is created a duplication in numbering, reads as follows:

5 A. For purposes of this act:

6 1. "Brewer" means any person who produces beer inside or out of  
7 this state;

8 2. "Beer" means the definition in paragraph 5 of Section 506 of  
9 Title 37 of the Oklahoma Statutes;

10 3. "Nonresident seller" means any person licensed pursuant to  
11 Section 524 of Title 37 of the Oklahoma Statutes;

12 4. "Existing nonresident seller" means a nonresident seller who  
13 distributes a particular brand of beer;

14 a. at the time a successor brewer acquires rights to  
15 manufacture or import the particular brand of beer, or

16 b. at the time a brewer terminates a distribution  
17 agreement with the nonresident seller;

18 5. "Fair market value" means the value that would be determined  
19 in a transaction by a willing buyer and a willing seller entered  
20 into without duress or threat and includes all elements of value,  
21 including goodwill and going-concern value;

22 6. "Good cause" means:  
23  
24

- 1 a. failure by the nonresident seller to comply with the  
2 material and reasonable provisions of a written  
3 agreement or understanding with the brewer, or  
4 b. failure by the nonresident seller to comply with the  
5 duty of good faith;

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

9 8. "Successor brewer" means a supplier, brewer or an importer  
10 that acquires rights to a beer brand from a predecessor brewer; and

11 9. "Successor nonresident seller" means one or more nonresident  
12 sellers or "Wholesalers", as defined by paragraph 4 of Section 163.2  
13 of Title 37 of the Oklahoma Statutes, appointed or designated by a  
14 brewer or successor brewer to replace the existing nonresident  
15 seller, for all or part of the existing nonresident seller's  
16 territory, in the distribution of the existing beer brand or brands.

17 B. 1. Except as provided in subsections C and D of this  
18 section, no brewer shall terminate a distribution sales agreement  
19 with any nonresident seller unless all of the following occur:

- 20 a. the brewer establishes good cause for such  
21 termination,  
22 b. the nonresident seller receives written notification  
23 by certified mail, return receipt requested, from the  
24 brewer of an alleged noncompliance with the

1 distribution sales agreement and is afforded no less  
2 than sixty (60) days in which to cure such  
3 noncompliance,

4 c. the nonresident seller fails to cure such  
5 noncompliance within the allotted cure period, and

6 d. the brewer provides written notice by certified mail,  
7 return receipt requested, to the nonresident seller of  
8 such continued noncompliance. The notification shall  
9 contain a statement of the intention of the brewer to  
10 terminate or not renew the distribution sales  
11 agreement, the reasons for termination or nonrenewal,  
12 and the date the termination or nonrenewal shall take  
13 effect.

14 2. If a nonresident seller cures an alleged noncompliance with  
15 a distribution sales agreement within the cure period provided in  
16 subparagraph b of paragraph 1 of this subsection, any notice of  
17 termination from a brewer to a nonresident seller shall be null and  
18 void.

19 C. A brewer may immediately terminate a distribution sales  
20 agreement with a nonresident seller, effective upon furnishing  
21 written notification to the nonresident seller by certified mail,  
22 return receipt requested, for any of the following reasons:

23 1. The assignment or attempted assignment by the nonresident  
24 seller for the benefit of creditors, the institution of proceedings

1 in bankruptcy by or against the nonresident seller, the dissolution  
2 or liquidation of the nonresident seller or the insolvency of the  
3 nonresident seller;

4 2. The revocation or suspension of, or the failure to renew for  
5 a period of more than fourteen (14) days, a nonresident seller's  
6 state, local or federal license or permit to sell beer in this  
7 state;

8 3. Failure of a nonresident seller to sell his or her ownership  
9 interest in the distribution rights to the brewer's beer within one  
10 hundred twenty (120) days after such nonresident seller has been  
11 convicted of a felony that, in the brewer's sole judgment, adversely  
12 affects the goodwill of the nonresident seller or brewer;

13 4. A nonresident seller has been convicted of, found guilty of  
14 or pled guilty or nolo contendere to, a charge of violating a law or  
15 regulation of the United States or of this state if it materially  
16 and adversely affects the ability of the nonresident seller or  
17 brewer to continue to sell its beer in this state;

18 5. Any attempted transfer of ownership of the nonresident  
19 seller, stock of the nonresident seller or stock of any parent  
20 corporation of the nonresident seller, or any change in the  
21 beneficial ownership or control of any entity, without obtaining the  
22 prior written approval of the brewer, which approval shall not be  
23 unreasonably withheld, except as may otherwise be permitted pursuant  
24 to a written distribution sales agreement between the parties;

1           6. Fraudulent conduct in the nonresident seller's dealings with  
2 the brewer or its beer, including the intentional sale of beer  
3 outside the brewer's established quality standards; or

4           7. The nonresident seller ceases to conduct business for five  
5 (5) consecutive business days, unless conducting the business is  
6 prevented or rendered impractical due to events beyond the  
7 nonresident seller's reasonable control as a result of an act of  
8 God, an insured casualty, war or a condition of national, state or  
9 local emergency.

10          D. If a particular brand of beer is transferred by purchase or  
11 otherwise from a brewer to a successor brewer, the following shall  
12 occur:

13           1. The successor brewer shall become obligated to all of the  
14 terms and conditions of the distribution sales agreement in effect  
15 on the date of succession. The provisions of this subsection shall  
16 apply regardless of the character or form of the succession. A  
17 successor brewer has the right to contractually require its  
18 nonresident seller to comply with operational standards of  
19 performance if the standards are uniformly established for all of  
20 the successor brewer's nonresident sellers. A successor brewer may,  
21 upon written notice, terminate its distribution sales agreement, in  
22 whole or in part, with a nonresident seller of the brewer it  
23 succeeded; provided, the successor nonresident seller first pays to  
24 the existing nonresident seller the fair market value of the

1 existing nonresident seller's business with respect to the  
2 terminated brand or brands;

3 2. If the successor brewer decides to terminate its  
4 distribution sales agreement with the existing nonresident seller  
5 for purposes of transfer, the successor brewer shall notify the  
6 existing nonresident seller in writing of the successor brewer's  
7 intent not to appoint the existing nonresident seller. The  
8 successor brewer shall mail the notice of termination by certified  
9 mail, return receipt requested, to the existing nonresident seller.  
10 The successor brewer shall include in the notice the names,  
11 addresses, and telephone numbers of the successor nonresident seller  
12 or nonresident sellers;

13 3. The successor nonresident seller shall negotiate with the  
14 existing nonresident seller to determine the fair market value of  
15 the existing nonresident seller's right to distribute the beer. The  
16 successor nonresident seller and the existing nonresident seller  
17 shall negotiate the fair market value in good faith. The existing  
18 nonresident seller shall continue to distribute the beer in good  
19 faith until payment of the compensation agreed to under this  
20 paragraph, or awarded under paragraph 4 of this subsection, is  
21 received; and

22 4. a. If the successor nonresident seller and the existing  
23 nonresident seller fail to reach a written agreement  
24 on the fair market value within thirty (30) days after

1 the existing nonresident seller receives the notice  
2 required pursuant to paragraph 2 of this subsection,  
3 the successor nonresident seller or the existing  
4 nonresident seller shall send a written notice to the  
5 other party requesting arbitration pursuant to  
6 Sections 1851 et seq. of Title 12 of the Oklahoma  
7 Statutes. Arbitration shall be held for the purpose  
8 of determining the fair market value of the existing  
9 nonresident seller's right to distribute the beer.

10 b. Notice of intent to arbitrate shall be sent, as  
11 provided in this paragraph, not later than forty (40)  
12 days after the existing nonresident seller receives  
13 the notice required pursuant to paragraph 2 of this  
14 subsection or paragraph 1 of subsection F of this  
15 section. The arbitration proceeding shall conclude  
16 not later than sixty (60) days after the date the  
17 notice of intent to arbitrate is mailed to a party,  
18 unless this time is extended by mutual agreement of  
19 the parties and the arbitrator.

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

- 22 (1) is closest to the existing nonresident seller,  
23 and  
24



1 (2) has a population of more than twenty thousand  
2 (20,000) people.

3 d. Any arbitration held pursuant to this paragraph shall  
4 be conducted before one impartial arbitrator to be  
5 selected by the American Arbitration Association or  
6 its successor. The arbitration shall be conducted in  
7 accordance with the rules and procedures of Sections  
8 1851 et seq. of Title 12 of the Oklahoma Statutes.

9 e. In determining the fair market value of the existing  
10 nonresident seller's right to distribute the beer, the  
11 arbitrator shall consider:

12 (1) the expected annual sales and earnings of the  
13 distribution sales agreement,

14 (2) the length of time the existing nonresident  
15 seller has held the distribution sales agreement,  
16 and

17 (3) other relevant elements of value, including  
18 goodwill and going concern-value.

19 f. An arbitrator's award in any arbitration held pursuant  
20 to this paragraph shall be monetary only and shall not  
21 enjoin or compel conduct. Any arbitration held  
22 pursuant to this paragraph shall be in lieu of all  
23 other remedies and procedures.  
24

1 g. The cost of the arbitrator and any other direct costs  
2 of an arbitration held pursuant to this paragraph  
3 shall be equally divided by the parties engaged in the  
4 arbitration. All other costs shall be paid by the  
5 party incurring them.

6 h. The arbitrator in any arbitration held pursuant to  
7 this paragraph shall render a written decision not  
8 later than thirty (30) days after the conclusion of  
9 the arbitration, unless this time is extended by  
10 mutual agreement of the parties and the arbitrator.  
11 The decision of the arbitrator is final and binding on  
12 the parties. The arbitrator's award may be enforced  
13 by commencing a civil action in any court of competent  
14 jurisdiction. The decision of the arbitrator may be  
15 appealed as authorized in Sections 1851 et seq. of  
16 Title 12 of the Oklahoma Statutes.

17 i. An existing nonresident seller or successor  
18 nonresident seller who fails to participate in the  
19 arbitration hearings in any arbitration held pursuant  
20 to this paragraph waives all rights the existing  
21 nonresident seller or successor nonresident seller  
22 would have had in the arbitration and is considered to  
23 have consented to the determination of the arbitrator.  
24

1 j. If the existing nonresident seller does not receive  
2 payment from the successor nonresident seller of the  
3 settlement or arbitration award required under  
4 paragraph 2 or 3 of this subsection within thirty (30)  
5 days after the date of the settlement or arbitration  
6 award:

- 7 (1) the existing nonresident seller shall remain the  
8 nonresident seller of the beer in the existing  
9 nonresident seller's territory to at least the  
10 same extent that the existing nonresident seller  
11 distributed the beer immediately before the  
12 successor brewer acquired rights to the beer, and  
13 (2) the existing nonresident seller is not entitled  
14 to the settlement or arbitration award.

15 E. A change in the laws or constitution of this state shall not  
16 constitute "good cause" for purposes of this act, and if the right  
17 or authorization of a nonresident seller to distribute or represent  
18 a particular brand of beer is terminated as a result of a change in  
19 the laws or constitution of this state, the provisions of this act  
20 shall be applicable.

21 F. 1. If a brewer terminates a nonresident seller and appoints  
22 or designates a successor nonresident seller for a brand or brands,  
23 the brewer shall provide written notice within thirty (30) days of  
24 appointing or designating the successor nonresident seller to the

1 existing nonresident seller of the appointment or designation of a  
2 successor nonresident seller and shall provide the names, addresses,  
3 and telephone numbers of the successor nonresident seller or  
4 nonresident sellers. If an existing nonresident seller is aggrieved  
5 by a violation of any provision of subsections B or C of this  
6 section, the nonresident seller shall provide notice of intent to  
7 arbitrate to the successor nonresident seller. The existing  
8 nonresident seller and successor nonresident seller shall proceed  
9 with the process as directed in paragraphs 3 and 4 of subsection D  
10 of this section, including arbitration if necessary. Disputes  
11 arising under paragraphs 3 and 4 of subsection D of this section may  
12 be addressed in a court of competent jurisdiction in this state.

13 2. Any disputes arising under subsection B or C of this section  
14 may also be settled by such dispute resolution procedures as may be  
15 provided by a written distribution sales agreement between the  
16 parties.

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

20 H. Nothing in this section shall be construed to give an  
21 existing nonresident seller or a successor nonresident seller any  
22 right to compensation if a distribution sales agreement with the  
23 existing nonresident seller or successor nonresident seller is  
24

1 terminated by a successor brewer pursuant to subsections B and C of  
2 this section.

3 I. No brewer shall require any nonresident seller to waive  
4 compliance with any provision of this section.

5 J. No brewer shall charge or accept, and no nonresident seller  
6 shall pay or provide, any money, property, gratuity, discount,  
7 rebate, free goods, allowances, thing of value or other inducement  
8 from a nonresident seller in exchange for the brewer entering into a  
9 distribution sales agreement with a nonresident seller.

10 SECTION 2. AMENDATORY 37 O.S. 2011, Section 524, as  
11 amended by Section 2, Chapter 382, O.S.L. 2013 (37 O.S. Supp. 2014,  
12 Section 524), is amended to read as follows:

13 Section 524. A. A nonresident seller license shall be required  
14 of all out-of-state distillers, winemakers, brewers, importers,  
15 brokers, and others who sell alcoholic beverages to wholesalers and  
16 Class B wholesalers in Oklahoma regardless of whether such sales are  
17 consummated within or without the State of Oklahoma.

18 A nonresident seller license shall authorize the holder thereof  
19 to solicit and take orders for alcoholic beverages from the holders  
20 of licenses authorized to import the same into this state, and to  
21 ship or deliver, or cause to be shipped or delivered, alcoholic  
22 beverages into Oklahoma pursuant to such sales.

23 B. A brewer not licensed in this state selling beer to a  
24 nonresident seller shall have a written distribution sales agreement

1 with the nonresident seller. Such agreement shall be subject to  
2 inspection by the ABLE Commission.

3 C. The Alcoholic Beverage Laws Enforcement Commission may,  
4 subject to the provisions of the Oklahoma Alcoholic Beverage Control  
5 Act requiring notice and hearing in the case of sanctions against  
6 holders of licenses, suspend or revoke a nonresident seller license  
7 for any violation of the Oklahoma Alcoholic Beverage Control Act by  
8 the holder thereof.

9 ~~C.~~ D. No licensee in this state authorized to import alcoholic  
10 beverages into this state shall purchase or receive any alcoholic  
11 beverages from without this state from any person not holding a  
12 valid and existing nonresident seller license. Every nonresident  
13 seller license shall expire on the June 30 following its issuance or  
14 renewal, and shall be eligible for subsequent renewal terms of one  
15 (1) year beginning on the July 1 following each expiration. License  
16 fees for a new or initial nonresident seller license applied for  
17 after July 1 may be prorated through the following June 30 on a  
18 quarterly basis.

19 ~~D.~~ E. The holder of a nonresident seller license shall,  
20 promptly upon consignment of any alcoholic beverages to an importer  
21 in Oklahoma, forward to the ABLE Commission a true copy of the  
22 invoice, bill of lading, or other document as the ABLE Commission  
23 may by regulations prescribe, showing the details of such shipment.  
24

1        ~~E.~~ F. Any person, not otherwise a dealer in alcoholic  
2 beverages, coming into possession of any alcoholic beverages as  
3 security for or in payment of a debt, or as an insurer ~~(or its~~  
4 ~~transferee or assignee)~~ for the salvage or liquidation of an insured  
5 casualty or damage or loss, or as an executor, administrator,  
6 trustee or other fiduciary, may sell the beverages in one lot or  
7 parcel to a duly licensed wholesaler at an agreed-upon price without  
8 regard to current posted prices. However, immediately after taking  
9 possession of the alcoholic beverages, the person shall register  
10 with the Director and furnish to him or her a detailed list of the  
11 alcoholic beverages and post with the Director a bond in such amount  
12 as the Director deems sufficient to protect the state from any taxes  
13 due on the alcoholic beverages. The person shall pay to the  
14 Director a registration fee of Ten Dollars (\$10.00), which fee shall  
15 permit the sale of only the alcoholic beverages detailed in the  
16 registration request. A wholesaler receiving a lot or parcel of  
17 alcoholic beverages pursuant to this subsection may sell it in one  
18 lot or parcel or more than one lot or parcel to a licensed package  
19 store or mixed beverage licensee or more than one licensed package  
20 store or mixed beverage licensee at an agreed-upon price without  
21 regard to current posted prices; provided, the total of the lots  
22 sold by the wholesaler shall not exceed four (4) lots.

23        SECTION 3. This act shall become effective July 1, 2015.  
24

1 SECTION 4. It being immediately necessary for the preservation  
2 of the public peace, health and safety, an emergency is hereby  
3 declared to exist, by reason whereof this act shall take effect and  
4 be in full force from and after its passage and approval.

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