

1 providing an effective date; and declaring an
2 emergency.

3
4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

8 A. For purposes of this act:

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

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

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

15 4. "Existing nonresident seller" means a nonresident seller who
16 distributes a particular brand of beer;

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

19 b. at the time a brewer terminates a distribution
20 agreement with the nonresident seller;

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

1 6. "Good cause" means:

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

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

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

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

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

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

1 brewer of an alleged noncompliance with the
2 distribution sales agreement and is afforded no less
3 than sixty (60) days in which to cure such
4 noncompliance,

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

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

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

20 C. A brewer may immediately terminate a distribution sales
21 agreement with a nonresident seller, effective upon furnishing
22 written notification to the nonresident seller by certified mail,
23 return receipt requested, for any of the following reasons:
24

1 1. The assignment or attempted assignment by the nonresident
2 seller for the benefit of creditors, the institution of proceedings
3 in bankruptcy by or against the nonresident seller, the dissolution
4 or liquidation of the nonresident seller or the insolvency of the
5 nonresident seller;

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

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

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

20 5. Any attempted transfer of ownership of the nonresident
21 seller, stock of the nonresident seller or stock of any parent
22 corporation of the nonresident seller, or any change in the
23 beneficial ownership or control of any entity, without obtaining the
24 prior written approval of the brewer, which approval shall not be

1 unreasonably withheld, except as may otherwise be permitted pursuant
2 to a written distribution sales agreement between the parties;

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

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

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

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

1 succeeded; provided, the successor nonresident seller first pays to
2 the existing nonresident seller the fair market value of the
3 existing nonresident seller's business with respect to the
4 terminated brand or brands;

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

15 3. The successor nonresident seller shall negotiate with the
16 existing nonresident seller to determine the fair market value of
17 the existing nonresident seller's right to distribute the beer. The
18 successor nonresident seller and the existing nonresident seller
19 shall negotiate the fair market value in good faith. The existing
20 nonresident seller shall continue to distribute the beer in good
21 faith until payment of the compensation agreed to under this
22 paragraph, or awarded under paragraph 4 of this subsection, is
23 received; and
24

1 4. a. If the successor nonresident seller and the existing
2 nonresident seller fail to reach a written agreement
3 on the fair market value within thirty (30) days after
4 the existing nonresident seller receives the notice
5 required pursuant to paragraph 2 of this subsection,
6 the successor nonresident seller or the existing
7 nonresident seller shall send a written notice to the
8 other party requesting arbitration pursuant to
9 Sections 1851 et seq. of Title 12 of the Oklahoma
10 Statutes. Arbitration shall be held for the purpose
11 of determining the fair market value of the existing
12 nonresident seller's right to distribute the beer.

13 b. Notice of intent to arbitrate shall be sent, as
14 provided in this paragraph, not later than forty (40)
15 days after the existing nonresident seller receives
16 the notice required pursuant to paragraph 2 of this
17 subsection or paragraph 1 of subsection F of this
18 section. The arbitration proceeding shall conclude
19 not later than sixty (60) days after the date the
20 notice of intent to arbitrate is mailed to a party,
21 unless this time is extended by mutual agreement of
22 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 nonresident seller,
2 and
3 (2) has a population of more than twenty thousand
4 (20,000) people.

5 d. Any arbitration held pursuant to this paragraph shall
6 be conducted before one impartial arbitrator to be
7 selected by the American Arbitration Association or
8 its successor. The arbitration shall be conducted in
9 accordance with the rules and procedures of Sections
10 1851 et seq. of Title 12 of the Oklahoma Statutes.

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

14 (1) the expected annual sales and earnings of the
15 distribution sales agreement,

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

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

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

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

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

19 i. An existing nonresident seller or successor
20 nonresident seller who fails to participate in the
21 arbitration hearings in any arbitration held pursuant
22 to this paragraph waives all rights the existing
23 nonresident seller or successor nonresident seller
24

1 would have had in the arbitration and is considered to
2 have consented to the determination of the arbitrator.

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

9 (1) the existing nonresident seller shall remain the
10 nonresident seller of the beer in the existing
11 nonresident seller's territory to at least the
12 same extent that the existing nonresident seller
13 distributed the beer immediately before the
14 successor brewer acquired rights to the beer, and

15 (2) the existing nonresident seller is not entitled
16 to the settlement or arbitration award.

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

23 F. 1. If a brewer terminates a nonresident seller and appoints
24 or designates a successor nonresident seller for a brand or brands,

1 the brewer shall provide written notice within thirty (30) days of
2 appointing or designating the successor nonresident seller to the
3 existing nonresident seller of the appointment or designation of a
4 successor nonresident seller and shall provide the names, addresses,
5 and telephone numbers of the successor nonresident seller or
6 nonresident sellers. If an existing nonresident seller is aggrieved
7 by a violation of any provision of subsections B or C of this
8 section, the nonresident seller shall provide notice of intent to
9 arbitrate to the successor nonresident seller. The existing
10 nonresident seller and successor nonresident seller shall proceed
11 with the process as directed in paragraphs 3 and 4 of subsection D
12 of this section, including arbitration if necessary. Disputes
13 arising under paragraphs 3 and 4 of subsection D of this section may
14 be addressed in a court of competent jurisdiction in this state.

15 2. Any disputes arising under subsection B or C of this section
16 may also be settled by such dispute resolution procedures as may be
17 provided by a written distribution sales agreement between the
18 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 nonresident seller or a successor nonresident seller any
24 right to compensation if a distribution sales agreement with the

1 existing nonresident seller or successor nonresident seller is
2 terminated by a successor brewer pursuant to subsections B and C of
3 this section.

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

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

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

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

19 A nonresident seller license shall authorize the holder thereof
20 to solicit and take orders for alcoholic beverages from the holders
21 of licenses authorized to import the same into this state, and to
22 ship or deliver, or cause to be shipped or delivered, alcoholic
23 beverages into Oklahoma pursuant to such sales.
24

1 B. A brewer not licensed in this state selling beer to a
2 nonresident seller shall have a written distribution sales agreement
3 with the nonresident seller. Such agreement shall be subject to
4 inspection by the ABLE Commission.

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

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

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

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

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

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

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7 COMMITTEE REPORT BY: COMMITTEE ON ALCOHOL, TOBACCO, AND CONTROLLED
8 SUBSTANCES, dated 04/07/2015 - DO PASS.
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