

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE  
FOR

HOUSE BILL NO. 2818

By: Echols

COMMITTEE SUBSTITUTE

An Act relating to alcoholic beverages; amending Sections 20, Chapter 366, O.S.L. 2016, as amended by Section 12, Chapter 364, O.S.L. 2017 and 47, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2017, Sections 2-108 and 2-135), which relate to beer distributor licenses and nonresident seller licenses; modifying name of license that authorizes the purchase and import of beer into the state; removing brewers and beer distributors from certain license requirement; deleting written distribution sales agreement requirement for certain brewers; replacing references to alcoholic beverages with wine and spirits; amending Sections 78, Chapter 366, O.S.L. 2016, as amended by Section 14, Chapter 364, O.S.L. 2017, 79, Chapter 366, O.S.L. 2016, 80, Chapter 366, O.S.L. 2016, as amended by Section 15, Chapter 364, O.S.L. 2017, and 85, Chapter 366, O.S.L. 2016 (37A O.S. Supp. 2017, Sections 3-108, 3-109, 3-110 and 3-115), which relate to regulations concerning the distribution of beer and quality control requirements; placing restrictions on where retail licensees may purchase beer; requiring compliance with certain act when transporting beer within the state; specifying manner by which beer may be transported; exempting certain beer and cider from provisions that authorize the withdrawal of stock due to quality control concerns; prohibiting retail licensees and brewers from requesting removal of beer or cider under certain circumstances; providing for the suspension or termination of license; and providing an effective date.

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

2 SECTION 1. AMENDATORY Section 20, Chapter 366, O.S.L.  
3 2016, as amended by Section 12, Chapter 364, O.S.L. 2017 (37A O.S.  
4 Supp. 2017, Section 2-108), is amended to read as follows:

5 Section 2-108. A. A beer distributor license shall authorize  
6 the holder thereof:

7 1. To purchase and import into this state beer from persons  
8 authorized to sell the same who are the holders of ~~manufacturer's~~  
9 brewer's or small brewer's licenses, ~~and their agents who are the~~  
10 ~~holders of manufacturer's agent licenses;~~

11 2. To purchase beer from licensed brewers and beer distributors  
12 in this state;

13 3. To sell in retail containers to retailers, mixed beverage,  
14 caterer, special event, public event, hotel beverage and  
15 airline/railroad beverage licensees in this state, beer which has  
16 been received, unloaded and stored at the holder's self-owned or  
17 leased and self-operated warehouses before such sale, unless  
18 otherwise permitted by this section; and

19 4. To sell beer in this state to beer distributors and out of  
20 this state to qualified persons, including federal instrumentalities  
21 and voluntary associations of military personnel on federal enclaves  
22 in this state over which this state has ceded jurisdiction.

23 B. In the event that no in-state beer distributor for a  
24 particular brewer is willing to deliver beer to a county or counties

1 located within the state, the ABLE Commission may grant an economic  
2 hardship exemption to an out-of-state beer distributor for a  
3 particular brewer and waive the at-rest requirement set forth in  
4 this section, upon a good-faith showing that:

5 1. It is economically infeasible or impractical for an in-state  
6 beer distributor for a particular brewer to deliver to the county or  
7 counties due to remoteness, or population, or both;

8 2. No in-state beer distributor of a particular manufacturer  
9 objects to the waiver within thirty (30) days of receiving written  
10 notice of the economic hardship application sent by the ABLE  
11 Commission; and

12 3. The out-of-state beer distributor agrees to pay all  
13 necessary licensing fees and remit all applicable taxes to the State  
14 of Oklahoma.

15 C. The economic hardship exemption provided for in subsection B  
16 of this section shall renew annually, provided that no in-state beer  
17 distributor for a particular brewer submits an executed distribution  
18 agreement to assume responsibility to distribute the beer in the  
19 subject county or counties at least sixty (60) days prior to the  
20 renewal date of the exemption. The in-state beer distributor who  
21 has executed a distribution agreement to assume responsibility to  
22 distribute beer in the subject territory shall compensate the out-  
23 of-state distributor the fair market value of the distribution  
24

1 rights of the territory as determined pursuant to Section 3-108 of  
2 this title.

3 D. Provided, nothing in this section shall require an Oklahoma  
4 licensed beer distributor with an Oklahoma designated territory on  
5 the effective date of this act to meet the hardship provisions in  
6 subsections B and C of this section to continue to operate as a  
7 licensed Oklahoma beer distributor.

8 SECTION 2. AMENDATORY Section 47, Chapter 366, O.S.L.  
9 2016 (37A O.S. Supp. 2017, Section 2-135), is amended to read as  
10 follows:

11 Section 2-135. A. All out-of-state distillers, winemakers,  
12 ~~brewers~~, importers, brokers and others who sell alcoholic beverages  
13 to wine and spirits wholesalers ~~and beer distributors~~ in Oklahoma,  
14 regardless of whether such sales are consummated within or without  
15 the state, must either obtain a manufacturer's license or contract  
16 with a person that maintains a nonresident seller license in order  
17 to sell alcoholic beverages intended for consumption within the  
18 State of Oklahoma.

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

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

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

22 ~~E.~~ D. The holder of a manufacturer's license or nonresident  
23 seller license shall, promptly upon consignment of any ~~alcoholic~~  
24 ~~beverages~~ wine or spirits to an importer in Oklahoma, forward to the

1 ABLE Commission a true copy of the invoice, bill of lading or other  
2 document as the ABLE Commission may by rule prescribe, showing the  
3 details of such shipment.

4 ~~F.~~ E. Any person, not otherwise a dealer in alcoholic  
5 beverages, coming into possession of any alcoholic beverages as  
6 security for or in payment of a debt, or as an insurer or its  
7 transferee or assignee for the salvage or liquidation of an insured  
8 casualty or damage or loss, or as an executor, administrator,  
9 trustee or other fiduciary, may sell the beverages in one lot or  
10 parcel to a duly licensed wholesaler or beer distributor at an  
11 agreed-upon price without regard to current posted prices. However,  
12 immediately after taking possession of the alcoholic beverages, the  
13 person shall register with the Director and furnish a detailed list  
14 of the alcoholic beverages and post with the Director a bond in such  
15 amount as the Director deems sufficient to protect the state from  
16 any taxes due on the alcoholic beverages. The person shall pay to  
17 the Director a registration fee of Fifty Dollars (\$50.00), which fee  
18 shall permit the sale of only the alcoholic beverages detailed in  
19 the registration request. A wholesaler or beer distributor  
20 receiving a lot or parcel of alcoholic beverages pursuant to this  
21 subsection may sell it in one lot or parcel or more than one lot or  
22 parcel to a licensed package store or mixed beverage licensee or  
23 more than one licensed package store or mixed beverage licensee at  
24 an agreed-upon price without regard to current posted prices;

1 provided, the total of the lots sold by the wholesaler or beer  
2 distributor shall not exceed four (4) lots.

3 SECTION 3. AMENDATORY Section 78, Chapter 366, O.S.L.  
4 2016, as amended by Section 14, Chapter 364, O.S.L. 2017 (37A O.S.  
5 Supp. 2017, Section 3-108), is amended to read as follows:

6 Section 3-108. A. The provisions of this section shall be in  
7 effect except as otherwise provided in Article XXVIII A of the  
8 Oklahoma Constitution.

9 B. Subject to the provisions of subsection D of this section,  
10 every licensed brewer or cider manufacturer authorized to sell its  
11 beer or cider in this state shall:

12 1. Enter into a distributor agreement with a licensed  
13 distributor, as defined herein, to sell the designated brands,  
14 including brand extensions, of the brewer or cider manufacturer.  
15 The agreement shall designate the sales territory of that licensed  
16 distributor and the designated brands to be sold by the licensed  
17 distributor. All such distributor agreements shall specifically  
18 authorize this sale of the designated brands by a licensed  
19 distributor within that sales territory. All such distributor  
20 agreements shall further provide that the licensed manufacturer who  
21 desires to sell a brand extension of a low-point beer in Oklahoma  
22 must assign the low-point beer brand extension to the licensed  
23 distributor to whom the licensed manufacturer granted the exclusive  
24

1 sales territory to the low-point beer brand from which the brand  
2 extension resulted;

3 2. Sell its registered and approved designated brands only to a  
4 licensed distributor with whom that brewer or cider manufacturer has  
5 a distributor agreement designating the sales territory of the  
6 licensed distributor and the designated brands to be sold by the  
7 licensed distributor;

8 3. Authorize only one licensed distributor for each designated  
9 sales territory. Such licensed distributor shall be the only  
10 licensed distributor for the designated brands of the authorizing  
11 brewer or cider manufacturer within that designated sales territory;  
12 and

13 4. Designate who is responsible for the distribution of its  
14 designated brands.

15 C. Subject to the provisions of subsection D of this section,  
16 any and all licensed distributors possessing the rights to  
17 distribute a low-point beer brand in a specific territory prior to  
18 the introduction of that low-point beer's correlating beer brand  
19 extension in that specific territory shall retain the right to  
20 distribute the low-point beer from which the brand extension  
21 resulted.

22 D. 1. No later than August 2, 2018, a brewer shall assign the  
23 exclusive right to distribute a beer brand, including brand  
24 extensions thereof, to the low-point beer distributor who was, prior



1 to the effective date of this act, assigned the exclusive  
2 distribution rights to the low-point beer from which the brand  
3 extension arose without charge or payment of compensation, unless  
4 the low-point beer distributor is, on the effective date of this  
5 act, a brewer of beer or low-point beer and has therefore been  
6 distributing low-point beer pursuant to a license to so distribute,  
7 subject to the provisions of subsection E of this section. This  
8 subsection shall not apply to a small brewer as defined in Section  
9 1-103 of this title.

10 2. With respect to brand extensions which arise after October  
11 1, 2018, the brewer or cider manufacturer shall assign the exclusive  
12 right to distribute the brand extension to the distributor who has  
13 been assigned the exclusive distribution rights to the beer or cider  
14 from which the brand extension arose, without charge or payment of  
15 compensation.

16 3. With respect to a brand of beer or cider which was, prior to  
17 April 15, 2017, distributed in this state only as strong beer or  
18 cider pursuant to the Alcoholic Beverage Control Act then in effect,  
19 if a low-point version of the brand is introduced after April 15,  
20 2017, no later than August 2, 2018, the brewer or cider manufacturer  
21 shall assign the exclusive rights to distribute the low-point  
22 version of the brand to the distributor who was, immediately prior  
23 to the introduction of the low-point version of the brand, assigned  
24

1 the exclusive distribution rights to the strong version of the brand  
2 without charge or payment of compensation.

3 4. No later than August 2, 2018, with respect to dual strength  
4 beer, the brewer thereof shall assign the exclusive right to  
5 distribute the brands represented by the dual strength beer to  
6 either the low-point beer distributor or the nonresident seller who  
7 had theretofore been assigned the exclusive distribution rights in  
8 the territory to either version of the dual strength beer; provided,  
9 however, whichever party is selected by the brewer must compensate  
10 the party that was not selected by the brewer for the loss of the  
11 distribution rights with respect to that particular territory.

12 Whichever party is selected shall obtain the requisite beer  
13 distributor license and shall be subject to the provisions of this  
14 act.

15 5. Compensation for the purposes of this provision shall be the  
16 fair market value of the party losing its distribution rights with  
17 respect to the beer within that specific territory. Fair market  
18 value shall be determined as set forth in Section 3-111 of this  
19 title and shall take into account all aspects of brand valuation,  
20 including but not limited to:

- 21 a. the diminished value of the distribution of one  
22 version of beer as a consequence of the subsequent  
23 introduction of the other version,

- b. the expected annual sales and earnings of the distributor agreement,
- c. the length of time the existing distributor held in the distribution sales agreement, and
- d. any other relevant items of value, such as goodwill and going concern.

E. If a brewer, whether directly or through an affiliate, maintained one or more licenses to distribute low-point beer in this state prior to the effective date of this act, then up to two of the brewer's low-point beer distribution licenses shall automatically convert to beer distribution licenses upon the effective date of this act, and such brewer shall be permitted to continue to distribute beer in two territories within which it currently distributes without the appointment of a distributor for such period of time as determined by the Legislature and consistent with the Constitution of the State of Oklahoma; provided however, it shall not be permitted to distribute beer outside of the territory unless it enters into a distributor agreement with an independent licensed distributor as provided in paragraph 1 of subsection B of this section. This section shall not apply to small brewers that have elected to self-distribute.

F. All retail licensees, including caterer, special event and public event licensees, may only purchase beer from the beer

1 distributor assigned to the territory within which the beer will be  
2 sold by the retail licensee at retail.

3 SECTION 4. AMENDATORY Section 79, Chapter 366, O.S.L.  
4 2016 (37A O.S. Supp. 2017, Section 3-109), is amended to read as  
5 follows:

6 Section 3-109. In order to regulate distribution of beer in  
7 this state and assure collection of all applicable taxes and fees,  
8 all beer sold in this state by a licensed distributor shall only be  
9 transported within this state to the licensed address and location  
10 of a licensed retailer or between the licensed addresses and  
11 locations of licensed retailers by a marked conveyance ~~owned or~~  
12 ~~leased by a licensed distributor~~ as set forth in the Oklahoma  
13 Alcoholic Beverage Control Act.

14 SECTION 5. AMENDATORY Section 80, Chapter 366, O.S.L.  
15 2016, as amended by Section 15, Chapter 364, O.S.L. 2017 (37A O.S.  
16 Supp. 2017, Section 3-110), is amended to read as follows:

17 Section 3-110. A. A licensed distributor designated as the  
18 licensed distributor for a beer brand within a designated sales  
19 territory shall present that beer brand for sale to all on-premise  
20 licensees on the same price basis and without discrimination and to  
21 all off-premise licensees on the same price basis within a  
22 particular county and without discrimination. A licensed  
23 distributor shall not sell, supply or deliver, either directly or  
24 indirectly through a third party, a beer brand to a licensed

1 retailer outside of the designated sales territory of the designated  
2 distributor nor to any person the licensed distributor has reason to  
3 believe will sell or supply any quantity of the beer brand to any  
4 retail location outside of the designated sales territory of the  
5 designated distributor.

6 B. All beer shall only be transported ~~by~~:

7 1. By a marked conveyance owned or leased by:

8 a. the licensed distributor and operated by the licensed  
9 distributor or an employee of the distributor ~~for~~, or

10 b. a licensed wine and spirits wholesaler having common  
11 ownership with the licensed beer distributor and  
12 operated by the commonly owned wine and spirits  
13 wholesaler or an employee of the commonly owned wine  
14 and spirits wholesaler; and

15 2. For the products of a licensed manufacturer within the  
16 designated sales territory to the address and location of a licensed  
17 retailer within that designated sales territory.

18 C. Any beer sold by the licensed distributor shall not be  
19 delivered to, received by or stored at any place other than the  
20 address and location of the licensed retailer for which state and  
21 local retailer licenses or permits have been issued.

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

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

4 E. All beer purchased by a licensed distributor for resale in  
5 this state shall physically come into the possession of the licensed  
6 distributor and be unloaded in and distributed from the licensed  
7 warehouses of the licensed distributor located in this state prior  
8 to being resold in this state.

9 SECTION 6. AMENDATORY Section 85, Chapter 366, O.S.L.  
10 2016 (37A O.S. Supp. 2017, Section 3-115), is amended to read as  
11 follows:

12 Section 3-115. A. To assure and control quality, a beer  
13 distributor or a holder of a small brewer self-distribution license  
14 or brewpub self-distribution license, at the time of a regular  
15 delivery, may withdraw with the permission of the retailer, a  
16 quantity of beer in undamaged original packaging from the retailer's  
17 stock if:

18 1. The beer distributor or holder of a small brewer self-  
19 distribution license or brewpub self-distribution license replaces  
20 the stock with beer of identical, equivalent value as the beer  
21 withdrawn; or

22 2. The stock is withdrawn before the date, or immediately after  
23 the date, considered by the brewer of the product to be the date the  
24 product becomes inappropriate for sale to a consumer.

1     B. The provisions of this section shall not apply to beer or  
2 cider that:

3     1. Has suffered damage at the retail licensee's location. Beer  
4 distributors, small brewer self-distributors and brewpub self-  
5 distributors are prohibited from giving a refund for or replacing  
6 beer or cider that was damaged while in the possession of the retail  
7 licensee. Retail licensees are prohibited from requesting or  
8 requiring the beer distributor, small brewer self-distributor and  
9 brewpub self-distributor to remove such damaged product as a  
10 condition of continued business with the retail licensee; and

11     2. Has a date for recommended use that expired on or before  
12 October 31, 2018, except as provided herein. Distributor agreements  
13 entered into pursuant to this title may not require the beer  
14 distributor to pick up any beer or cider in violation of this  
15 section. For the first thirty (30) days after October 1, 2018, the  
16 beer distributor may elect to pick up beer or cider with a date for  
17 recommended use that has expired on or before October 1, 2018. The  
18 brewer of the expired beer or cider may reimburse the beer  
19 distributor for the quantities picked up during this thirty-day  
20 grace period. Retail licensees and brewers are prohibited from  
21 requesting or requiring the beer distributor, small brewer self-  
22 distributor and brewpub self-distributor to remove such expired beer  
23 or cider as a condition of continued business with the retail  
24 licensee or brewer.

1        C. A consignment sale of beer is not authorized under this  
2 section.

3        D. A licensee acting in violation of this section shall be  
4 subject to a suspension or termination of its license for such time  
5 as the Director of the ABLE Commission deems appropriate.

6        SECTION 7. This act shall become effective October 1, 2018.  
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