

1 ENGROSSED HOUSE
2 BILL NO. 2818

By: Echols of the House

3 and

4 Smalley of the Senate

5
6
7 [alcoholic beverages - beer distributor licenses and
8 nonresident seller licenses - distribution of beer
9 and quality control requirements - effective date]
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12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY Section 20, Chapter 366, O.S.L.
14 2016, as amended by Section 12, Chapter 364, O.S.L. 2017 (37A O.S.
15 Supp. 2017, Section 2-108), is amended to read as follows:

16 Section 2-108. A. A beer distributor license shall authorize
17 the holder thereof:

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

22 2. To purchase beer from licensed brewers and beer distributors
23 in this state;
24

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

7 4. To sell beer in this state to beer distributors and out of
8 this state to qualified persons, including federal instrumentalities
9 and voluntary associations of military personnel on federal enclaves
10 in this state over which this state has ceded jurisdiction.

11 B. In the event that no in-state beer distributor for a
12 particular brewer is willing to deliver beer to a county or counties
13 located within the state, the ABLE Commission may grant an economic
14 hardship exemption to an out-of-state beer distributor for a
15 particular brewer and waive the at-rest requirement set forth in
16 this section, upon a good-faith showing that:

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

20 2. No in-state beer distributor of a particular manufacturer
21 objects to the waiver within thirty (30) days of receiving written
22 notice of the economic hardship application sent by the ABLE
23 Commission; and
24

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

4 C. The economic hardship exemption provided for in subsection B
5 of this section shall renew annually, provided that no in-state beer
6 distributor for a particular brewer submits an executed distribution
7 agreement to assume responsibility to distribute the beer in the
8 subject county or counties at least sixty (60) days prior to the
9 renewal date of the exemption. The in-state beer distributor who
10 has executed a distribution agreement to assume responsibility to
11 distribute beer in the subject territory shall compensate the out-
12 of-state distributor the fair market value of the distribution
13 rights of the territory as determined pursuant to Section 3-108 of
14 this title.

15 D. Provided, nothing in this section shall require an Oklahoma
16 licensed beer distributor with an Oklahoma designated territory on
17 the effective date of this act to meet the hardship provisions in
18 subsections B and C of this section to continue to operate as a
19 licensed Oklahoma beer distributor.

20 SECTION 2. AMENDATORY Section 47, Chapter 366, O.S.L.
21 2016 (37A O.S. Supp. 2017, Section 2-135), is amended to read as
22 follows:

23 Section 2-135. A. All out-of-state distillers, winemakers,
24 ~~brewers,~~ importers, brokers and others who sell alcoholic beverages

1 to wine and spirits wholesalers ~~and beer distributors~~ in Oklahoma,
2 regardless of whether such sales are consummated within or without
3 the state, must either obtain a manufacturer's license or contract
4 with a person that maintains a nonresident seller license in order
5 to sell alcoholic beverages intended for consumption within the
6 State of Oklahoma.

7 A manufacturer's license or nonresident seller license shall
8 authorize the holder thereof to solicit and take orders for
9 alcoholic beverages, except beer, from the holders of licenses
10 authorized to import the same into this state, and to ship or
11 deliver, or cause to be shipped or delivered, alcoholic beverages
12 into Oklahoma pursuant to such sales.

13 ~~B. A brewer not licensed in this state selling beer to a~~
14 ~~nonresident seller shall have a written distribution sales agreement~~
15 ~~with the nonresident seller. Such agreement shall be subject to~~
16 ~~inspection by the ABLE Commission.~~

17 ~~C.~~ The ABLE Commission may, subject to the provisions of the
18 Oklahoma Alcoholic Beverage Control Act requiring notice and hearing
19 in the case of sanctions against holders of licenses, suspend or
20 revoke a manufacturer's license or nonresident seller license for
21 any violation of the Oklahoma Alcoholic Beverage Control Act by the
22 holder thereof.

23 ~~D.~~ C. No licensee in this state authorized to import ~~alcoholic~~
24 ~~beverages~~ wine and spirits into this state shall purchase or receive

1 any ~~alcoholic beverages~~ wine and spirits from without this state
2 from any person not holding a valid and existing manufacturer's
3 license or nonresident seller license. Every manufacturer's license
4 or nonresident seller license shall expire on the June 30 following
5 its issuance or renewal, and shall be eligible for subsequent
6 renewal terms of one (1) year beginning on the July 1 following each
7 expiration. License fees for a new or initial manufacturer's
8 license or nonresident seller license applied for after July 1 may
9 be prorated through the following June 30 on a quarterly basis.

10 ~~F.~~ D. The holder of a manufacturer's license or nonresident
11 seller license shall, promptly upon consignment of any ~~alcoholic~~
12 ~~beverages~~ wine or spirits to an importer in Oklahoma, forward to the
13 ABLE Commission a true copy of the invoice, bill of lading or other
14 document as the ABLE Commission may by rule prescribe, showing the
15 details of such shipment.

16 ~~F.~~ E. Any person, not otherwise a dealer in alcoholic
17 beverages, coming into possession of any alcoholic beverages as
18 security for or in payment of a debt, or as an insurer or its
19 transferee or assignee for the salvage or liquidation of an insured
20 casualty or damage or loss, or as an executor, administrator,
21 trustee or other fiduciary, may sell the beverages in one lot or
22 parcel to a duly licensed wholesaler or beer distributor at an
23 agreed-upon price without regard to current posted prices. However,
24 immediately after taking possession of the alcoholic beverages, the

1 person shall register with the Director and furnish a detailed list
2 of the alcoholic beverages and post with the Director a bond in such
3 amount as the Director deems sufficient to protect the state from
4 any taxes due on the alcoholic beverages. The person shall pay to
5 the Director a registration fee of Fifty Dollars (\$50.00), which fee
6 shall permit the sale of only the alcoholic beverages detailed in
7 the registration request. A wholesaler or beer distributor
8 receiving a lot or parcel of alcoholic beverages pursuant to this
9 subsection may sell it in one lot or parcel or more than one lot or
10 parcel to a licensed package store or mixed beverage licensee or
11 more than one licensed package store or mixed beverage licensee at
12 an agreed-upon price without regard to current posted prices;
13 provided, the total of the lots sold by the wholesaler or beer
14 distributor shall not exceed four (4) lots.

15 SECTION 3. AMENDATORY Section 78, Chapter 366, O.S.L.
16 2016, as amended by Section 14, Chapter 364, O.S.L. 2017 (37A O.S.
17 Supp. 2017, Section 3-108), is amended to read as follows:

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

21 B. Subject to the provisions of subsection D of this section,
22 every licensed brewer or cider manufacturer authorized to sell its
23 beer or cider in this state shall:
24

1 1. Enter into a distributor agreement with a licensed
2 distributor, as defined herein, to sell the designated brands,
3 including brand extensions, of the brewer or cider manufacturer.
4 The agreement shall designate the sales territory of that licensed
5 distributor and the designated brands to be sold by the licensed
6 distributor. All such distributor agreements shall specifically
7 authorize this sale of the designated brands by a licensed
8 distributor within that sales territory. All such distributor
9 agreements shall further provide that the licensed manufacturer who
10 desires to sell a brand extension of a low-point beer in Oklahoma
11 must assign the low-point beer brand extension to the licensed
12 distributor to whom the licensed manufacturer granted the exclusive
13 sales territory to the low-point beer brand from which the brand
14 extension resulted;

15 2. Sell its registered and approved designated brands only to a
16 licensed distributor with whom that brewer or cider manufacturer has
17 a distributor agreement designating the sales territory of the
18 licensed distributor and the designated brands to be sold by the
19 licensed distributor;

20 3. Authorize only one licensed distributor for each designated
21 sales territory. Such licensed distributor shall be the only
22 licensed distributor for the designated brands of the authorizing
23 brewer or cider manufacturer within that designated sales territory;
24 and

1 4. Designate who is responsible for the distribution of its
2 designated brands.

3 C. Subject to the provisions of subsection D of this section,
4 any and all licensed distributors possessing the rights to
5 distribute a low-point beer brand in a specific territory prior to
6 the introduction of that low-point beer's correlating beer brand
7 extension in that specific territory shall retain the right to
8 distribute the low-point beer from which the brand extension
9 resulted.

10 D. 1. No later than August 2, 2018, a brewer shall assign the
11 exclusive right to distribute a beer brand, including brand
12 extensions thereof, to the low-point beer distributor who was, prior
13 to the effective date of this act, assigned the exclusive
14 distribution rights to the low-point beer from which the brand
15 extension arose without charge or payment of compensation, unless
16 the low-point beer distributor is, on the effective date of this
17 act, a brewer of beer or low-point beer and has therefore been
18 distributing low-point beer pursuant to a license to so distribute,
19 subject to the provisions of subsection E of this section. This
20 subsection shall not apply to a small brewer as defined in Section
21 1-103 of this title.

22 2. With respect to brand extensions which arise after October
23 1, 2018, the brewer or cider manufacturer shall assign the exclusive
24 right to distribute the brand extension to the distributor who has

1 been assigned the exclusive distribution rights to the beer or cider
2 from which the brand extension arose, without charge or payment of
3 compensation.

4 3. With respect to a brand of beer or cider which was, prior to
5 April 15, 2017, distributed in this state only as strong beer or
6 cider pursuant to the Alcoholic Beverage Control Act then in effect,
7 if a low-point version of the brand is introduced after April 15,
8 2017, no later than August 2, 2018, the brewer or cider manufacturer
9 shall assign the exclusive rights to distribute the low-point
10 version of the brand to the distributor who was, immediately prior
11 to the introduction of the low-point version of the brand, assigned
12 the exclusive distribution rights to the strong version of the brand
13 without charge or payment of compensation.

14 4. No later than August 2, 2018, with respect to dual strength
15 beer, the brewer thereof shall assign the exclusive right to
16 distribute the brands represented by the dual strength beer to
17 either the low-point beer distributor or the nonresident seller who
18 had theretofore been assigned the exclusive distribution rights in
19 the territory to either version of the dual strength beer; provided,
20 however, whichever party is selected by the brewer must compensate
21 the party that was not selected by the brewer for the loss of the
22 distribution rights with respect to that particular territory.
23 Whichever party is selected shall obtain the requisite beer

1 distributor license and shall be subject to the provisions of this
2 act.

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

- 9 a. the diminished value of the distribution of one
10 version of beer as a consequence of the subsequent
11 introduction of the other version,
- 12 b. the expected annual sales and earnings of the
13 distributor agreement,
- 14 c. the length of time the existing distributor held in
15 the distribution sales agreement, and
- 16 d. any other relevant items of value, such as goodwill
17 and going concern.

18 E. If a brewer, whether directly or through an affiliate,
19 maintained one or more licenses to distribute low-point beer in this
20 state prior to the effective date of this act, then up to two of the
21 brewer's low-point beer distribution licenses shall automatically
22 convert to beer distribution licenses upon the effective date of
23 this act, and such brewer shall be permitted to continue to
24 distribute beer in two territories within which it currently

1 distributes without the appointment of a distributor for such period
2 of time as determined by the Legislature and consistent with the
3 Constitution of the State of Oklahoma; provided however, it shall
4 not be permitted to distribute beer outside of the territory unless
5 it enters into a distributor agreement with an independent licensed
6 distributor as provided in paragraph 1 of subsection B of this
7 section. This section shall not apply to small brewers that have
8 elected to self-distribute.

9 F. All retail licensees, including caterer, special event and
10 public event licensees, may only purchase beer from the beer
11 distributor assigned to the territory within which the beer will be
12 sold by the retail licensee at retail.

13 SECTION 4. AMENDATORY Section 79, Chapter 366, O.S.L.
14 2016 (37A O.S. Supp. 2017, Section 3-109), is amended to read as
15 follows:

16 Section 3-109. In order to regulate distribution of beer in
17 this state and assure collection of all applicable taxes and fees,
18 all beer sold in this state by a licensed distributor shall only be
19 transported within this state to the licensed address and location
20 of a licensed retailer or between the licensed addresses and
21 locations of licensed retailers by a marked conveyance ~~owned or~~
22 ~~leased by a licensed distributor~~ as set forth in the Oklahoma
23 Alcoholic Beverage Control Act.

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

Section 3-110. A. A licensed distributor designated as the licensed distributor for a beer brand within a designated sales territory shall present that beer brand for sale to all on-premise licensees on the same price basis and without discrimination and to all off-premise licensees on the same price basis within a particular county and without discrimination. A licensed distributor shall not sell, supply or deliver, either directly or indirectly through a third party, a beer brand to a licensed retailer outside of the designated sales territory of the designated distributor nor to any person the licensed distributor has reason to believe will sell or supply any quantity of the beer brand to any retail location outside of the designated sales territory of the designated distributor.

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

1. By a marked conveyance owned or leased by:

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

b. a licensed wine and spirits wholesaler having common ownership with the licensed beer distributor and operated by the commonly owned wine and spirits

1 wholesaler or an employee of the commonly owned wine
2 and spirits wholesaler; and

3 2. For the products of a licensed manufacturer within the
4 designated sales territory to the address and location of a licensed
5 retailer within that designated sales territory.

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

10 D. With the approval of the licensed manufacturer, a licensed
11 distributor may sell the designated brands to a licensed retailer
12 located in a designated sales territory of another licensed
13 distributor if that licensed distributor is temporarily unable for
14 any reason to provide the designated brands of the licensed
15 manufacturer within its designated sales territory.

16 E. All beer purchased by a licensed distributor for resale in
17 this state shall physically come into the possession of the licensed
18 distributor and be unloaded in and distributed from the licensed
19 warehouses of the licensed distributor located in this state prior
20 to being resold in this state.

21 SECTION 6. AMENDATORY Section 85, Chapter 366, O.S.L.
22 2016 (37A O.S. Supp. 2017, Section 3-115), is amended to read as
23 follows:
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1 Section 3-115. A. To assure and control quality, a beer
2 distributor or a holder of a small brewer self-distribution license
3 or brewpub self-distribution license, at the time of a regular
4 delivery, may withdraw with the permission of the retailer, a
5 quantity of beer in undamaged original packaging from the retailer's
6 stock if:

7 1. The beer distributor or holder of a small brewer self-
8 distribution license or brewpub self-distribution license replaces
9 the stock with beer of identical, equivalent value as the beer
10 withdrawn; or

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

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

16 1. Has suffered damage at the retail licensee's location. Beer
17 distributors, small brewer self-distributors and brewpub self-
18 distributors are prohibited from giving a refund for or replacing
19 beer or cider that was damaged while in the possession of the retail
20 licensee. Retail licensees are prohibited from requesting or
21 requiring the beer distributor, small brewer self-distributor and
22 brewpub self-distributor to remove such damaged product as a
23 condition of continued business with the retail licensee; and
24

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

15 C. A consignment sale of beer is not authorized under this
16 section.

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

20 SECTION 7. This act shall become effective October 1, 2018.
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1 Passed the House of Representatives the 14th day of March, 2018.

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4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2018.

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8 Presiding Officer of the Senate