

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2818

By: Echols

7 COMMITTEE SUBSTITUTE

8 An Act relating to alcoholic beverages; amending
9 Sections 20, Chapter 366, O.S.L. 2016, as amended by
10 Section 12, Chapter 364, O.S.L. 2017 and 47, Chapter
11 366, O.S.L. 2016 (37A O.S. Supp. 2017, Sections 2-108
12 and 2-135), which relate to beer distributor licenses
13 and nonresident seller licenses; modifying name of
14 license that authorizes the purchase and import of
15 beer into the state; removing brewers and beer
16 distributors from certain license requirement;
17 deleting written distribution sales agreement
18 requirement for certain brewers; replacing references
19 to alcoholic beverages with wine and spirits;
20 amending Sections 78, Chapter 366, O.S.L. 2016, as
21 amended by Section 14, Chapter 364, O.S.L. 2017, 79,
22 Chapter 366, O.S.L. 2016, 80, Chapter 366, O.S.L.
23 2016, as amended by Section 15, Chapter 364, O.S.L.
24 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
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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
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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
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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,
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- 1 b. the expected annual sales and earnings of the
2 distributor agreement,
3 c. the length of time the existing distributor held in
4 the distribution sales agreement, and
5 d. any other relevant items of value, such as goodwill
6 and going concern.

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

22 F. All retail licensees, including caterer, special event and
23 public event licensees, may only purchase beer from the beer
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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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8 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 03/05/2018 - DO PASS,
9 As Amended.
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