

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 3401

By: McEntire

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5
6 AS INTRODUCED

7 An Act relating to alcoholic beverages; amending
8 Section 93, Chapter 366, O.S.L. 2016, as amended by
9 Section 2, Chapter 431, O.S.L. 2019 (37A O.S. Supp.
10 2019, Section 3-123), which relates to wholesalers,
11 beer distributors and retailers; authorizing certain
12 social media exchanges; defining term; and providing
13 an effective date.

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

15 SECTION 1. AMENDATORY Section 93, Chapter 366, O.S.L.
16 2016, as amended by Section 2, Chapter 431, O.S.L. 2019 (37A O.S.
17 Supp. 2019, Section 3-123), is amended to read as follows:

18 Section 3-123. A. It shall be unlawful for any person
19 privileged to sell alcoholic beverages to wholesalers, beer
20 distributors or retailers:

21 1. To discriminate, directly or indirectly, in price between
22 one wine and spirits wholesaler and another wine and spirits
23 wholesaler, when that manufacturer has not designated a single wine
24 and spirits wholesaler, or between one retailer and another retailer

1 purchasing alcoholic beverages bearing the same brand or trade name
2 and of like age and quality, unless otherwise provided by law; or

3 2. To grant, directly or indirectly, any discount, rebate, free
4 goods, allowance or other inducement.

5 B. The ABLE Commission is hereby authorized to promulgate rules
6 which are necessary to carry out the purpose of this section and to
7 prevent its circumvention by offering or giving of any rebate,
8 allowance, free goods, discount or any other thing or service of
9 value; provided, the posting or invoicing of charges per order for
10 processing minimum orders or per case for the handling or repacking
11 of goods by wine and spirits wholesalers and beer distributors for
12 sales in less than full case lots shall not constitute a violation
13 of this section.

14 C. For the violation of any provision of this section or of any
15 rule duly promulgated under this section, the ABLE Commission may
16 suspend or revoke a license as follows:

17 1. For a first offense, not exceeding ten (10) days' suspension
18 of license;

19 2. For a second offense, not exceeding thirty (30) days'
20 suspension of license; and

21 3. For a third offense, the ABLE Commission shall revoke the
22 license.

23 D. For purposes of this section, and except as otherwise
24 provided in subsection E of this section, "inducement" means

1 directly or indirectly offering, selling, trading, giving or
2 furnishing any discount, free goods, electronic or nonelectronic
3 refrigerated equipment, barrels, tubs, fixtures, dispensing
4 equipment, outdoor electric or nonelectric advertising structure
5 displaying the retailer's name, permanent shelving, supplies, gifts,
6 prizes, instantly redeemable coupons, premiums, retailer rebates,
7 services of any employee including but not limited to affixing price
8 labels or tags, routinely stocking product on shelves other than the
9 stocking of cold boxes, paying a third party for entering product
10 and price information into a retailer's computer system, portal,
11 website, spreadsheet or third-party system, handling product that
12 was not sold to the retailer by the licensee, paying a slotting fee,
13 selling on consignment, operating a retailer's cash register,
14 conducting janitorial services, decoration, samples of alcoholic
15 beverages, personal property or other inducement or thing of value
16 to any retail spirit, retail beer, retail wine, beer and wine, mixed
17 beverage, caterer, bottle club or special event licensee, wine and
18 spirits wholesaler or beer distributor, their agents or employees.

19 E. It shall not be deemed an inducement for a brewer, beer
20 distributor, small brewer self-distributor or brewpub self-
21 distributor to voluntarily take the following merchandising actions
22 with the permission of the retail licensee:

23 1. Furnish point-of-sale advertising materials and consumer
24 advertising specialties, as those terms are defined in 27 C.F.R.,

1 Section 6.84 and in compliance with the other limits and
2 restrictions provided in 27 C.F.R., Section 6.84;

3 2. Give or sell product displays, including but not limited to
4 barrels and tubs, provided that the value of such displays does not
5 exceed the limits and restrictions provided in 27 C.F.R., Section
6 6.83;

7 3. Build product displays, accessible to the customer and
8 without disturbing competitors' products, for the product being
9 delivered by the beer distributor;

10 4. Affix pricing to the shelf strip or product display for the
11 product being delivered by the beer distributor, small brewer self-
12 distributor or brewpub self-distributor, or brewed by the brewer;

13 5. Routinely stock and restock shelves and cold boxes and
14 rotate product that has been sold to the retail licensee by the beer
15 distributor, small brewer self-distributor or brewpub self-
16 distributor, or brewed by the brewer;

17 6. Furnish things of value to a temporary retailer, as defined
18 in 27 C.F.R., Section 6.85;

19 7. Sell equipment or supplies to a retail licensee, provided
20 the equipment or supplies are sold at a price not less than the cost
21 to the industry member and payment is collected within thirty (30)
22 days of the sale;

23 8. Install dispensing accessories at the retail location, as
24 long as the retailer bears the cost of installation including

1 equipment; or furnish, give or sell coil cleaning services to a
2 retailer;

3 9. Withdraw quantities of beer or cider in undamaged, original
4 packaging from the retail licensee's stock, provided the beer
5 distributor, small brewer self-distributor, brewpub self-distributor
6 or brewer sold such beer, directly or indirectly, to the retail
7 licensee and such removal is otherwise permitted under Section 3-115
8 of this title; provided, however, replacing with beer or cider of
9 equivalent value shall not be considered a consignment sale;

10 10. Provide mail-in rebates for beer, cider and nonalcoholic
11 beverage merchandise items, funded by the brewer and redeemed by the
12 brewer, either by itself or through a third-party fulfillment
13 company, for a discount or rebate on the beer, cider or nonalcoholic
14 item;

15 11. Provide a recommended shelf plan or shelf schematic to a
16 retail licensee for all or any portion of the inventory sold by the
17 retail licensee;

18 12. Furnish or give a sample of beer or cider to a retailer who
19 has not purchased the brand from that brewer, beer distributor,
20 small brewer self-distributor or brewpub self-distributor within the
21 last twelve (12) months, provided that the brewer, beer distributor,
22 small brewer self-distributor or brewpub self-distributor may not
23 give more than thirty-six (36) ounces of any brand of beer or cider
24 to a specific retailer;

1 13. Furnish or give newspaper cuts, mats or engraved blocks for
2 use in retailers' advertisements;

3 14. Package and distribute beer or cider in combination with
4 other nonalcoholic items for sale to consumers;

5 15. Give or sponsor educational seminars for employees of
6 retailers either at the brewer, beer distributor, small brewer self-
7 distributor or brewpub self-distributor's premises or at the
8 retailer's establishment, including seminars dealing with use of a
9 retailer's equipment, training seminars for employees of retailers
10 or tours of the brewer, beer distributor, small brewer self-
11 distributor, or brewpub self-distributor's plant premises, provided
12 that the brewer, beer distributor, small brewer self-distributor or
13 brewpub self-distributor shall not pay the retailer for the
14 employees' travel, lodging or other expenses in conjunction with an
15 educational seminar but may provide nominal hospitality during the
16 event;

17 16. Conduct tasting or sampling activities at a retail
18 establishment and purchase the products to be used from the retailer
19 so long as the purchase price paid does not exceed the ordinary
20 retail price; provided, a beer distributor shall not be required to
21 provide labor for such sampling activities;

22 17. Offer contest prizes, premium offers, refunds and like
23 items directly to consumers so long as officers, employees and
24 representatives of brewers, beer distributors, small brewer self-

1 distributors, brewpub self-distributors and licensed retailers are
2 excluded from participation;

3 18. List the names and addresses of two or more unaffiliated
4 retailers selling the products of a brewer, beer distributor, small
5 brewer, small brewer self-distributor or brewpub self-distributor in
6 an advertisement of such brewer, beer distributor, small brewer,
7 small brewer self-distributor or brewpub self-distributor so long as
8 the requirements of 27 C.F.R., Section 6.98 are satisfied,
9 considering applicable guidance issued by the United States
10 Department of Treasury Alcohol and Tobacco Tax and Trade Bureau;
11 provided, nothing in the Oklahoma Alcoholic Beverage Control Act
12 shall prohibit a retail, mixed beverage, on-premises beer and wine,
13 public event, special event, charitable auction, charitable
14 alcoholic beverage event, or complimentary beverage licensee from
15 communicating with a brewer, beer distributor, small brewer, small
16 brewer self-distributor or brewpub self-distributor on social media
17 or sharing media on the social media page or site of a brewer, beer
18 distributor, small brewer, small brewer self-distributor or brewpub
19 self-distributor. A retail, mixed beverage, on-premises beer and
20 wine, public event, special event, charitable auction, charitable
21 alcoholic beverage event, or complimentary beverage licensee may
22 request free social media advertising from a brewer, beer
23 distributor, small brewer, small brewer self-distributor or brewpub
24 self-distributor; provided, nothing in this section shall prohibit a

1 brewer, beer distributor, small brewer, small brewer self-
2 distributor or brewpub self-distributor from sharing, reposting or
3 forwarding a social media post by a retail, mixed beverage, on-
4 premises beer and wine, public event, special event, charitable
5 auction, charitable alcoholic beverage event, or complimentary
6 beverage licensee, as long as the sharing, reposting or forwarding
7 of the social media post does not contain the retail price of any
8 alcoholic beverage. No brewer, beer distributor, small brewer,
9 small brewer self-distributor or brewpub self-distributor shall pay
10 or reimburse a retail, mixed beverage, on-premises beer and wine,
11 public event, special event, charitable auction, charitable
12 alcoholic beverage event, or complimentary beverage licensee,
13 directly or indirectly, for any social media advertising services.
14 No retail, mixed beverage, on-premises beer and wine, public event,
15 special event, charitable auction, charitable alcoholic beverage
16 event, or complimentary beverage licensee shall accept any payment
17 or reimbursement, directly or indirectly, for any social media
18 advertising service offered by a brewer, beer distributor, small
19 brewer, small brewer self-distributor or brewpub self-distributor.
20 For purposes of this paragraph, "social media" means a service,
21 platform or site where users communicate with one another and share
22 media, such as pictures, videos, music and blogs, with other users
23 free of charge; or
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1 19. Entering product and price information into a retailer's
2 portal, website, spreadsheet or third-party system. A brewer may
3 pay for a third-party system that provides data and pricing services
4 to the brewer or a beer distributor.

5 F. It shall not be deemed an inducement for a brewer, beer
6 distributor, small brewer self-distributor or brewpub self-
7 distributor to engage in the following marketing activities,
8 provided that the brewer, beer distributor, small brewer self-
9 distributor or brewpub self-distributor shall not pay the retailer's
10 travel costs other than those for local transportation or lodging:

11 1. Provide tickets to a retailer for a sporting or
12 entertainment event so long as a representative of the brewer, beer
13 distributor, small brewer self-distributor or brewpub self-
14 distributor attends the event with the retailer;

15 2. Provide food and beverage to a retailer for immediate
16 consumption:

- 17 a. at a meeting at which the primary purpose is the
18 discussion of business,
19 b. at a convention when the food and beverages are
20 offered to all participants, or
21 c. at a sports or entertainment event that the
22 representatives of a brewer, beer distributor, small
23 brewer self-distributor or brewpub self-distributor
24 attend with the retailer;

1 3. Participate in retailer association activities by engaging
2 in the following actions:

- 3 a. displaying products at a convention or trade show,
- 4 b. renting display booth space if the rental fee is the
5 same as paid by all exhibitors at the event,
- 6 c. providing its own hospitality which is independent
7 from association-sponsored activities,
- 8 d. purchasing tickets to functions and paying
9 registration fees if the payments or fees are the same
10 as paid by all attendees, participants or exhibitors
11 at the event, or
- 12 e. making payments for advertisements in programs or
13 brochures issued by retailer associations at a
14 convention or trade show; or

15 4. Giving or selling outdoor signs to a retailer so long as the
16 following requirements of 27 C.F.R., Section 6.102 are satisfied:

- 17 a. the sign bears conspicuous and substantial advertising
18 matter about the product or the brewer, beer
19 distributor, small brewer self-distributor or brewpub
20 self-distributor which is permanently inscribed or
21 securely affixed,
- 22 b. the retailer is not compensated, directly or
23 indirectly, such as through a sign company, for
24 displaying the signs, and

1 c. a permanent outdoor sign does not contain the
2 retailer's name.

3 SECTION 2. This act shall become effective November 1, 2020.
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