

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3401

By: McEntire

AS INTRODUCED

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

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

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

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

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

brewer, beer distributor, small brewer, small brewer self-  
distributor or brewpub self-distributor from sharing, reposting or  
forwarding a social media post by a retail, mixed beverage, on-  
premises beer and wine, public event, special event, charitable  
auction, charitable alcoholic beverage event, or complimentary  
beverage licensee, as long as the sharing, reposting or forwarding  
of the social media post does not contain the retail price of any  
alcoholic beverage. No brewer, beer distributor, small brewer,  
small brewer self-distributor or brewpub self-distributor shall pay  
or reimburse a retail, mixed beverage, on-premises beer and wine,  
public event, special event, charitable auction, charitable  
alcoholic beverage event, or complimentary beverage licensee,  
directly or indirectly, for any social media advertising services.  
No retail, mixed beverage, on-premises beer and wine, public event,  
special event, charitable auction, charitable alcoholic beverage  
event, or complimentary beverage licensee shall accept any payment  
or reimbursement, directly or indirectly, for any social media  
advertising service offered by a brewer, beer distributor, small  
brewer, small brewer self-distributor or brewpub self-distributor.  
For purposes of this paragraph, "social media" means a service,  
platform or site where users communicate with one another and share  
media, such as pictures, videos, music and blogs, with other users  
free of charge; or



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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