

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 1723

By: Coleman of the Senate

and

Marti of the House

COMMITTEE SUBSTITUTE

An Act relating to alcoholic beverages; amending 37A O.S. 2021, Section 3-116, which relates to sale of alcoholic beverages by licensed wine and spirits wholesalers; allowing wine and spirits wholesalers to adjust prices monthly; authorizing wine and spirits wholesalers to impose minimum fees; requiring wine and spirits wholesalers to provide electronic copies of prices for inspection to the ABLE Commission; prohibiting prices from being subject to the Oklahoma Open Records Act or public dissemination by the ABLE Commission; amending 37A O.S. 2021, Section 3-123, which relates to sale of alcoholic beverages to wholesalers, beer distributors, or retailers; exempting wholesalers from violations of ABLE Commission rules for imposition of minimum fees; repealing 37A O.S. 2021, Sections 3-116.1, 3-116.2, and 3-116.3, which relate to posting requirements for wholesalers; and declaring an emergency.

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

3 SECTION 1. AMENDATORY 37A O.S. 2021, Section 3-116, is
4 amended to read as follows:

5 Section 3-116. A. Any manufacturer or subsidiary of a
6 manufacturer who markets its products solely through a subsidiary or
7 subsidiaries, a distiller, rectifier, bottler, winemaker or importer
8 of alcoholic beverages, bottled or made in a foreign country, either
9 within or without this state, may sell such brands or kinds of
10 alcoholic beverages to every licensed wine and spirits wholesaler
11 who desires to purchase the same, on the same price basis and
12 without discrimination or inducements, and shall further be required
13 to sell such beverages only to those persons licensed as wine and
14 spirits wholesalers.

15 B. The provisions of subsection A of this section shall not
16 apply to a brewer except as otherwise stated herein. In the event a
17 brewer, who has entered into territorial distribution agreements
18 with beer distributors in this state, markets wine and spirits
19 products in this state either itself or through a subsidiary or
20 affiliate, then such brewer, subsidiary or affiliate may elect to
21 designate beer distributors, with whom it has entered into
22 territorial distribution agreements, as its designated wholesalers
23 for any wine and spirit products to be sold by the brewer,
24 subsidiary or affiliate within said beer distributors' existing

1 territories, provided such beer distributors must also hold a wine
2 and spirits wholesaler license. In such event, the beer
3 distributors shall be deemed designated wholesalers for the
4 territory with respect to the designated products. Provided, in the
5 event a beer distributor has not obtained a wine and spirits
6 license, has elected not to sell wine and spirits in its respective
7 territory or, in the brewer's commercially reasonable discretion, is
8 not suitable to sell wine and spirits in its respective territory,
9 then the brewer, subsidiary or affiliate may extend the territory of
10 an existing beer distributor, with whom it has entered into a
11 territorial distribution agreement and who holds a wine and spirits
12 wholesaler license, for said territory. For purposes of this
13 subsection only, the phrase "subsidiary or affiliate" shall mean any
14 entity that the brewer controls, is controlled by, or is under
15 common control with, during the time that the wine and spirits
16 brands are offered for sale in this state, and "control" shall mean
17 ownership of more than fifty percent (50%) of the voting securities
18 or assets of, or the ability to dictate the material operations of,
19 another entity. If the brewer, subsidiary or affiliate sells the
20 wine and spirits brands to a manufacturer other than one that would
21 otherwise fall within the provisions of this subsection, then the
22 rights provided in this subsection which relate to the wine and
23 spirits brands shall terminate. The rights provided to beer
24 distributors pursuant to Section 3-111 of this title shall not be

1 extended to apply to the wine or spirits brands distributed pursuant
2 to this subsection.

3 C. No manufacturer shall require a wine and spirits wholesaler
4 to purchase any alcoholic beverages or any goods, wares or
5 merchandise as a condition to the wine and spirits wholesaler
6 obtaining or being entitled to purchase any alcoholic beverages.

7 Violation of this section shall be a misdemeanor. Conviction
8 hereunder shall automatically revoke the violator's license.

9 D. In the event a manufacturer or nonresident seller has not
10 designated a designated wholesaler to sell its products in the
11 state, the nondesignated products shall be posted in accordance with
12 the following:

13 1. On the first business day of each month, the manufacturer
14 shall post with the ABLE Commission the price of all wine and
15 spirits it proposes to offer for sale to licensed wine and spirit
16 wholesalers in this state. All prices shall become effective on the
17 first business day of the following month and shall remain in effect
18 and unchanged for a period of not less than one (1) month. The
19 posting shall be submitted on a form approved by the ABLE Commission
20 and shall identify the brand, size, alcohol content and price of
21 each item intended to be offered for sale. No change or
22 modification of the posted price shall be permitted except upon
23 written permission from the ABLE Commission based on good cause
24 shown;

1 2. When a new item is registered, or an old item is
2 discontinued, or any change is made by a manufacturer or nonresident
3 seller as to price, age, proof, label or type of bottle of any item
4 offered for sale in this state, such new item, discontinued item or
5 change in price, age, proof, label or type of bottle of any item
6 shall be listed separately on the cover page of the price schedule
7 and, in the case of prices changed, shall reflect both the old and
8 the new price of the item changed. All new items and changes as to
9 age, proof, label or type of bottle in which any item is offered for
10 sale shall first be submitted in writing to the ABLE Commission for
11 approval under such requirements as it may deem proper. Approval or
12 disapproval of price changes shall not be required if filed in
13 conformity with the provisions of this subsection.

14 a. In addition to the foregoing requirements, the
15 manufacturer shall, at the same time, on regular forms
16 provided by the ABLE Commission, re-register all items
17 of alcoholic beverage which the manufacturer had
18 registered and offered for sale in this state during
19 the previous price period.

20 b. A short form of price posting may be permitted by the
21 ABLE Commission for any price period in which no new
22 item is offered or old item discontinued, or change is
23 made in the price, age, proof, label or type of bottle
24 of any item offered by any manufacturer. Such short

1 form shall contain only such statements as the
2 Director may require or permit;

3 3. The brand name, size, proof and type of alcoholic beverages
4 must be shown on each container sold in this state;

5 4. No brand of alcoholic beverage shall be listed on a price
6 list or posting in more than one place, or offered for sale by more
7 than one method, or at more than one price, except as provided
8 hereafter:

9 a. a manufacturer who has posted F.O.B. prices from a
10 foreign shipping point shall also list the same
11 item(s) at an F.O.B. point within the continental
12 United States. Only one United States F.O.B. point
13 shall be permitted, and

14 b. a manufacturer may list on their price list or posting
15 an item of specific size that may be packaged in more
16 than one type or design container, provided that the
17 containers being offered have been approved by the
18 ABLE Commission;

19 5. The manufacturer shall sell to the wine and spirits
20 wholesalers all items of wine and spirits at the current posted
21 price in effect on the date of the shipment as shown on the
22 manifest, bill of lading or invoice;

23 6. A full and correct copy of each said price registration
24 shall be transmitted to wine and spirits wholesalers on the same day

1 such prices are filed with or mailed to the ABLE Commission. Proof
2 of such mailing or delivery shall be furnished the ABLE Commission
3 by the manufacturer with the price registration or upon request;

4 7. The sale, or offer to sell, of any item of alcoholic
5 beverage by a manufacturer to a wine and spirits wholesaler at a
6 price not in compliance with the price posted with the ABLE
7 Commission may be deemed a violation; and

8 8. This subsection shall not apply to a manufacturer that has
9 designated a wine and spirits wholesaler to sell its product in the
10 state or a brewer who has appointed a beer distributor as a
11 designated wholesaler pursuant to subsection B of Section 3-116 of
12 this title, with respect to designated products.

13 E. Every wine and spirits wholesaler shall maintain its wine
14 and spirits prices through the end of the calendar month. The wine
15 and spirits wholesaler may change any wine and spirits price at the
16 beginning of each calendar month.

17 F. Every wine and spirits wholesaler is authorized to fill
18 orders non-sequentially and impose minimum order, delivery,
19 handling, processing, repackaging, and invoicing fees onto its
20 orders. These activities shall not constitute a violation of this
21 title or any rule promulgated under this title.

22 G. Every wine and spirits wholesaler shall make available for
23 inspection by the ABLE Commission upon request an electronic copy of
24 the prices in which its wine and spirits were sold to the retail

1 tier in this state. The electronic copy shall list the line-item
2 price, handling cost, transportation cost, and any other costs that
3 may be associated with the sale or delivery of that item. The
4 prices provided by the wine and spirits wholesaler shall not be
5 subject to the Open Records Act or publicly disseminated by the ABLE
6 Commission.

7 SECTION 2. AMENDATORY 37A O.S. 2021, Section 3-123, is
8 amended to read as follows:

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

12 1. To discriminate, directly or indirectly, in price between
13 one wine and spirits wholesaler and another wine and spirits
14 wholesaler, when that manufacturer has not designated a single wine
15 and spirits wholesaler, or between one retailer and another retailer
16 purchasing alcoholic beverages bearing the same brand or trade name
17 and of like age and quality, unless otherwise provided by law; or

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

20 B. The ABLE Commission is hereby authorized to promulgate rules
21 which are necessary to carry out the purpose of this section and to
22 prevent its circumvention by offering or giving of any rebate,
23 allowance, free goods, discount or any other thing or service of
24 value; provided, the ~~posting or invoicing of charges per order for~~

~~processing minimum orders or per case for the handling or repacking~~
~~of goods~~ imposition of minimum order, delivery, handling,
processing, repackaging, and invoicing fees onto its order by wine
and spirits wholesalers and beer distributors ~~for sales in less than~~
~~full case lots~~ shall not constitute a violation of this section.

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

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

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

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

D. For purposes of this section, and except as otherwise
provided in subsection E of this section, "inducement" means
directly or indirectly offering, selling, trading, giving or
furnishing any discount, free goods, electronic or nonelectronic
refrigerated equipment, barrels, tubs, fixtures, dispensing
equipment, outdoor electric or nonelectric advertising structure
displaying the retailer's name, permanent shelving, supplies, gifts,
prizes, instantly redeemable coupons, premiums, retailer rebates,
services of any employee including but not limited to affixing price
labels or tags, routinely stocking product on shelves other than the

1 stocking of cold boxes, paying a third party for entering product
2 and price information into a retailer's computer system, portal,
3 website, spreadsheet or third-party system, handling product that
4 was not sold to the retailer by the licensee, paying a slotting fee,
5 selling on consignment, operating a retailer's cash register,
6 conducting janitorial services, decoration, samples of alcoholic
7 beverages, personal property or other inducement or thing of value
8 to any retail spirit, retail beer, retail wine, beer and wine, mixed
9 beverage, caterer, bottle club or special event licensee, wine and
10 spirits wholesaler or beer distributor, their agents or employees.

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

15 1. Furnish point-of-sale advertising materials and consumer
16 advertising specialties, as those terms are defined in 27 C.F.R.,
17 Section 6.84 and in compliance with the other limits and
18 restrictions provided in 27 C.F.R., Section 6.84;

19 2. Give or sell product displays, including but not limited to
20 barrels and tubs, provided that the value of such displays does not
21 exceed the limits and restrictions provided in 27 C.F.R., Section
22 6.83;

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

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

7 5. Routinely stock and restock shelves and cold boxes and
8 rotate product that has been sold to the retail licensee by the beer
9 distributor, small brewer self-distributor or brewpub self-
10 distributor, or brewed by the brewer;

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

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

17 8. Install dispensing accessories at the retail location, as
18 long as the retailer bears the cost of installation including
19 equipment; or furnish, give or sell coil cleaning services to a
20 retailer;

21 9. Withdraw quantities of beer or cider in undamaged, original
22 packaging from the retail licensee's stock, provided the beer
23 distributor, small brewer self-distributor, brewpub self-distributor
24 or brewer sold such beer, directly or indirectly, to the retail

licensee and such removal is otherwise permitted under Section 3-115 of this title; provided, however, replacing with beer or cider of equivalent value shall not be considered a consignment sale;

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

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

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

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

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

15. Give or sponsor educational seminars for employees of retailers either at the brewer, beer distributor, small brewer self-

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

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

16 17. Offer contest prizes, premium offers, refunds and like
17 items directly to consumers so long as officers, employees and
18 representatives of brewers, beer distributors, small brewer self-
19 distributors, brewpub self-distributors and licensed retailers are
20 excluded from participation;

21 18. List the names and addresses of two or more unaffiliated
22 retailers selling the products of a brewer, beer distributor, small
23 brewer, small brewer self-distributor or brewpub self-distributor in
24 an advertisement of such brewer, beer distributor, small brewer,

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

1 of the social media post does not contain the retail price of any
2 alcoholic beverage. No brewer, beer distributor, small brewer,
3 small brewer self-distributor or brewpub self-distributor shall pay
4 or reimburse a retail, mixed beverage, on-premises beer and wine,
5 public event, special event, charitable auction, charitable
6 alcoholic beverage event, or complimentary beverage licensee,
7 directly or indirectly, for any social media advertising services.
8 No retail, mixed beverage, on-premises beer and wine, public event,
9 special event, charitable auction, charitable alcoholic beverage
10 event, or complimentary beverage licensee shall accept any payment
11 or reimbursement, directly or indirectly, for any social media
12 advertising service offered by a brewer, beer distributor, small
13 brewer, small brewer self-distributor or brewpub self-distributor.
14 For purposes of this paragraph, "social media" means a service,
15 platform or site where users communicate with one another and share
16 media, such as pictures, videos, music and blogs, with other users
17 free of charge; or

18 19. Entering product and price information into a retailer's
19 portal, website, spreadsheet or third-party system. A brewer may
20 pay for a third-party system that provides data and pricing services
21 to the brewer or a beer distributor.

22 F. It shall not be deemed an inducement for a brewer, beer
23 distributor, small brewer self-distributor or brewpub self-
24 distributor to engage in the following marketing activities,

provided that the brewer, beer distributor, small brewer self-distributor or brewpub self-distributor shall not pay the retailer's travel costs other than those for local transportation or lodging:

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

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

a. at a meeting at which the primary purpose is the discussion of business,

b. at a convention when the food and beverages are offered to all participants, or

c. at a sports or entertainment event that the representatives of a brewer, beer distributor, small brewer self-distributor or brewpub self-distributor attend with the retailer;

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

a. displaying products at a convention or trade show,

b. renting display booth space if the rental fee is the same as paid by all exhibitors at the event,

c. providing its own hospitality which is independent from association-sponsored activities,

- 1 d. purchasing tickets to functions and paying
2 registration fees if the payments or fees are the same
3 as paid by all attendees, participants or exhibitors
4 at the event, or
5 e. making payments for advertisements in programs or
6 brochures issued by retailer associations at a
7 convention or trade show; or

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

- 10 a. the sign bears conspicuous and substantial advertising
11 matter about the product or the brewer, beer
12 distributor, small brewer self-distributor or brewpub
13 self-distributor which is permanently inscribed or
14 securely affixed,
15 b. the retailer is not compensated, directly or
16 indirectly, such as through a sign company, for
17 displaying the signs, and
18 c. a permanent outdoor sign does not contain the
19 retailer's name.

20 SECTION 3. REPEALER 37A O.S. 2021, Sections 3-116.1, 3-
21 116.2, and 3-116.3, are hereby repealed.

22 SECTION 4. It being immediately necessary for the preservation
23 of the public peace, health or safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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