

1 ENGROSSED SENATE  
2 BILL NO. 1723

By: Coleman of the Senate

3 and

4 Marti of the House

5  
6 [ alcoholic beverages - wine and spirits wholesalers  
7 to adjust prices monthly - impose minimum fees -  
8 electronic copies of prices for inspection - repealer  
9 -  
10 emergency ]

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

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

14 Section 3-116. A. Any manufacturer or subsidiary of a  
15 manufacturer who markets its products solely through a subsidiary or  
16 subsidiaries, a distiller, rectifier, bottler, winemaker or importer  
17 of alcoholic beverages, bottled or made in a foreign country, either  
18 within or without this state, may sell such brands or kinds of  
19 alcoholic beverages to every licensed wine and spirits wholesaler  
20 who desires to purchase the same, on the same price basis and  
21 without discrimination or inducements, and shall further be required  
22 to sell such beverages only to those persons licensed as wine and  
23 spirits wholesalers.

24 B. The provisions of subsection A of this section shall not  
apply to a brewer except as otherwise stated herein. In the event a

1 brewer, who has entered into territorial distribution agreements  
2 with beer distributors in this state, markets wine and spirits  
3 products in this state either itself or through a subsidiary or  
4 affiliate, then such brewer, subsidiary or affiliate may elect to  
5 designate beer distributors, with whom it has entered into  
6 territorial distribution agreements, as its designated wholesalers  
7 for any wine and spirit products to be sold by the brewer,  
8 subsidiary or affiliate within said beer distributors' existing  
9 territories, provided such beer distributors must also hold a wine  
10 and spirits wholesaler license. In such event, the beer  
11 distributors shall be deemed designated wholesalers for the  
12 territory with respect to the designated products. Provided, in the  
13 event a beer distributor has not obtained a wine and spirits  
14 license, has elected not to sell wine and spirits in its respective  
15 territory or, in the brewer's commercially reasonable discretion, is  
16 not suitable to sell wine and spirits in its respective territory,  
17 then the brewer, subsidiary or affiliate may extend the territory of  
18 an existing beer distributor, with whom it has entered into a  
19 territorial distribution agreement and who holds a wine and spirits  
20 wholesaler license, for said territory. For purposes of this  
21 subsection only, the phrase "subsidiary or affiliate" shall mean any  
22 entity that the brewer controls, is controlled by, or is under  
23 common control with, during the time that the wine and spirits  
24 brands are offered for sale in this state, and "control" shall mean

1 ownership of more than fifty percent (50%) of the voting securities  
2 or assets of, or the ability to dictate the material operations of,  
3 another entity. If the brewer, subsidiary or affiliate sells the  
4 wine and spirits brands to a manufacturer other than one that would  
5 otherwise fall within the provisions of this subsection, then the  
6 rights provided in this subsection which relate to the wine and  
7 spirits brands shall terminate. The rights provided to beer  
8 distributors pursuant to Section 3-111 of this title shall not be  
9 extended to apply to the wine or spirits brands distributed pursuant  
10 to this subsection.

11 C. No manufacturer shall require a wine and spirits wholesaler  
12 to purchase any alcoholic beverages or any goods, wares or  
13 merchandise as a condition to the wine and spirits wholesaler  
14 obtaining or being entitled to purchase any alcoholic beverages.

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

17 D. In the event a manufacturer or nonresident seller has not  
18 designated a designated wholesaler to sell its products in the  
19 state, the nondesignated products shall be posted in accordance with  
20 the following:

21 1. On the first business day of each month, the manufacturer  
22 shall post with the ABLE Commission the price of all wine and  
23 spirits it proposes to offer for sale to licensed wine and spirit  
24 wholesalers in this state. All prices shall become effective on the

1 first business day of the following month and shall remain in effect  
2 and unchanged for a period of not less than one (1) month. The  
3 posting shall be submitted on a form approved by the ABLE Commission  
4 and shall identify the brand, size, alcohol content and price of  
5 each item intended to be offered for sale. No change or  
6 modification of the posted price shall be permitted except upon  
7 written permission from the ABLE Commission based on good cause  
8 shown;

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

22 a. In addition to the foregoing requirements, the  
23 manufacturer shall, at the same time, on regular forms  
24 provided by the ABLE Commission, re-register all items

1 of alcoholic beverage which the manufacturer had  
2 registered and offered for sale in this state during  
3 the previous price period.

4 b. A short form of price posting may be permitted by the  
5 ABLE Commission for any price period in which no new  
6 item is offered or old item discontinued, or change is  
7 made in the price, age, proof, label or type of bottle  
8 of any item offered by any manufacturer. Such short  
9 form shall contain only such statements as the  
10 Director may require or permit;

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

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

17 a. a manufacturer who has posted F.O.B. prices from a  
18 foreign shipping point shall also list the same  
19 item(s) at an F.O.B. point within the continental  
20 United States. Only one United States F.O.B. point  
21 shall be permitted, and

22 b. a manufacturer may list on their price list or posting  
23 an item of specific size that may be packaged in more  
24 than one type or design container, provided that the

1 containers being offered have been approved by the  
2 ABLE Commission;

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

7 6. A full and correct copy of each said price registration  
8 shall be transmitted to wine and spirits wholesalers on the same day  
9 such prices are filed with or mailed to the ABLE Commission. Proof  
10 of such mailing or delivery shall be furnished the ABLE Commission  
11 by the manufacturer with the price registration or upon request;

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

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

21 E. Every wine and spirits wholesaler shall maintain its wine  
22 and spirits prices through the end of the calendar month. The wine  
23 and spirits wholesaler may change any wine and spirits price at the  
24 beginning of each calendar month.

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

6       G. Every wine and spirits wholesaler shall make available for  
7 inspection by the ABLE Commission upon request an electronic copy of  
8 the prices in which its wine and spirits were sold to the retail  
9 tier in this state. The electronic copy shall list the line-item  
10 price, handling cost, transportation cost, and any other costs that  
11 may be associated with the sale or delivery of that item. The  
12 prices provided by the wine and spirits wholesaler shall not be  
13 subject to the Oklahoma Open Records Act or publicly disseminated by  
14 the ABLE Commission.

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

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

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

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

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

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

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

22 3. For a third offense, the ABLE Commission shall revoke the  
23 license.  
24



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

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

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

5        2.    Give or sell product displays, including but not limited to  
6 barrels and tubs, provided that the value of such displays does not  
7 exceed the limits and restrictions provided in 27 C.F.R., Section  
8 6.83;

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

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

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

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

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

1        8. Install dispensing accessories at the retail location, as  
2 long as the retailer bears the cost of installation including  
3 equipment; or furnish, give or sell coil cleaning services to a  
4 retailer;

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

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

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

20       12. Furnish or give a sample of beer or cider to a retailer who  
21 has not purchased the brand from that brewer, beer distributor,  
22 small brewer self-distributor or brewpub self-distributor within the  
23 last twelve (12) months, provided that the brewer, beer distributor,  
24 small brewer self-distributor or brewpub self-distributor may not

1 give more than thirty-six (36) ounces of any brand of beer or cider  
2 to a specific retailer;

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

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

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

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

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

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

1 request free social media advertising from a brewer, beer  
2 distributor, small brewer, small brewer self-distributor or brewpub  
3 self-distributor; provided, nothing in this section shall prohibit a  
4 brewer, beer distributor, small brewer, small brewer self-  
5 distributor or brewpub self-distributor from sharing, reposting or  
6 forwarding a social media post by a retail, mixed beverage, on-  
7 premises beer and wine, public event, special event, charitable  
8 auction, charitable alcoholic beverage event, or complimentary  
9 beverage licensee, as long as the sharing, reposting or forwarding  
10 of the social media post does not contain the retail price of any  
11 alcoholic beverage. No brewer, beer distributor, small brewer,  
12 small brewer self-distributor or brewpub self-distributor shall pay  
13 or reimburse a retail, mixed beverage, on-premises beer and wine,  
14 public event, special event, charitable auction, charitable  
15 alcoholic beverage event, or complimentary beverage licensee,  
16 directly or indirectly, for any social media advertising services.  
17 No retail, mixed beverage, on-premises beer and wine, public event,  
18 special event, charitable auction, charitable alcoholic beverage  
19 event, or complimentary beverage licensee shall accept any payment  
20 or reimbursement, directly or indirectly, for any social media  
21 advertising service offered by a brewer, beer distributor, small  
22 brewer, small brewer self-distributor or brewpub self-distributor.  
23 For purposes of this paragraph, "social media" means a service,  
24 platform or site where users communicate with one another and share

1 media, such as pictures, videos, music and blogs, with other users  
2 free of charge; or

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

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

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

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

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

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

23 c. at a sports or entertainment event that the  
24 representatives of a brewer, beer distributor, small

1            brewer self-distributor or brewpub self-distributor  
2            attend with the retailer;

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

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

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

- 19           a. the sign bears conspicuous and substantial advertising  
20           matter about the product or the brewer, beer  
21           distributor, small brewer self-distributor or brewpub  
22           self-distributor which is permanently inscribed or  
23           securely affixed,



b. the retailer is not compensated, directly or indirectly, such as through a sign company, for displaying the signs, and

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

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

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

Passed the Senate the 22nd day of March, 2022.

Presiding Officer of the Senate

Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
2022.

Presiding Officer of the House  
of Representatives