

1 **SENATE FLOOR VERSION**

2 March 3, 2022

3 COMMITTEE SUBSTITUTE
4 FOR
5 SENATE BILL NO. 1723

By: Coleman of the Senate

and

Marti of the House

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9 [alcoholic beverages - wine and spirits wholesalers
10 to adjust prices monthly - impose minimum fees -
11 electronic copies of prices for inspection - repealer
12 -

emergency]

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

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

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

1 to sell such beverages only to those persons licensed as wine and
2 spirits wholesalers.

3 B. The provisions of subsection A of this section shall not
4 apply to a brewer except as otherwise stated herein. In the event a
5 brewer, who has entered into territorial distribution agreements
6 with beer distributors in this state, markets wine and spirits
7 products in this state either itself or through a subsidiary or
8 affiliate, then such brewer, subsidiary or affiliate may elect to
9 designate beer distributors, with whom it has entered into
10 territorial distribution agreements, as its designated wholesalers
11 for any wine and spirit products to be sold by the brewer,
12 subsidiary or affiliate within said beer distributors' existing
13 territories, provided such beer distributors must also hold a wine
14 and spirits wholesaler license. In such event, the beer
15 distributors shall be deemed designated wholesalers for the
16 territory with respect to the designated products. Provided, in the
17 event a beer distributor has not obtained a wine and spirits
18 license, has elected not to sell wine and spirits in its respective
19 territory or, in the brewer's commercially reasonable discretion, is
20 not suitable to sell wine and spirits in its respective territory,
21 then the brewer, subsidiary or affiliate may extend the territory of
22 an existing beer distributor, with whom it has entered into a
23 territorial distribution agreement and who holds a wine and spirits
24 wholesaler license, for said territory. For purposes of this

1 subsection only, the phrase "subsidiary or affiliate" shall mean any
2 entity that the brewer controls, is controlled by, or is under
3 common control with, during the time that the wine and spirits
4 brands are offered for sale in this state, and "control" shall mean
5 ownership of more than fifty percent (50%) of the voting securities
6 or assets of, or the ability to dictate the material operations of,
7 another entity. If the brewer, subsidiary or affiliate sells the
8 wine and spirits brands to a manufacturer other than one that would
9 otherwise fall within the provisions of this subsection, then the
10 rights provided in this subsection which relate to the wine and
11 spirits brands shall terminate. The rights provided to beer
12 distributors pursuant to Section 3-111 of this title shall not be
13 extended to apply to the wine or spirits brands distributed pursuant
14 to this subsection.

15 C. No manufacturer shall require a wine and spirits wholesaler
16 to purchase any alcoholic beverages or any goods, wares or
17 merchandise as a condition to the wine and spirits wholesaler
18 obtaining or being entitled to purchase any alcoholic beverages.

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

21 D. In the event a manufacturer or nonresident seller has not
22 designated a designated wholesaler to sell its products in the
23 state, the nondesignated products shall be posted in accordance with
24 the following:

1 1. On the first business day of each month, the manufacturer
2 shall post with the ABLE Commission the price of all wine and
3 spirits it proposes to offer for sale to licensed wine and spirit
4 wholesalers in this state. All prices shall become effective on the
5 first business day of the following month and shall remain in effect
6 and unchanged for a period of not less than one (1) month. The
7 posting shall be submitted on a form approved by the ABLE Commission
8 and shall identify the brand, size, alcohol content and price of
9 each item intended to be offered for sale. No change or
10 modification of the posted price shall be permitted except upon
11 written permission from the ABLE Commission based on good cause
12 shown;

13 2. When a new item is registered, or an old item is
14 discontinued, or any change is made by a manufacturer or nonresident
15 seller as to price, age, proof, label or type of bottle of any item
16 offered for sale in this state, such new item, discontinued item or
17 change in price, age, proof, label or type of bottle of any item
18 shall be listed separately on the cover page of the price schedule
19 and, in the case of prices changed, shall reflect both the old and
20 the new price of the item changed. All new items and changes as to
21 age, proof, label or type of bottle in which any item is offered for
22 sale shall first be submitted in writing to the ABLE Commission for
23 approval under such requirements as it may deem proper. Approval or

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1 disapproval of price changes shall not be required if filed in
2 conformity with the provisions of this subsection.

3 a. In addition to the foregoing requirements, the
4 manufacturer shall, at the same time, on regular forms
5 provided by the ABLE Commission, re-register all items
6 of alcoholic beverage which the manufacturer had
7 registered and offered for sale in this state during
8 the previous price period.

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

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

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

22 a. a manufacturer who has posted F.O.B. prices from a
23 foreign shipping point shall also list the same
24 item(s) at an F.O.B. point within the continental

1 United States. Only one United States F.O.B. point
2 shall be permitted, and

3 b. a manufacturer may list on their price list or posting
4 an item of specific size that may be packaged in more
5 than one type or design container, provided that the
6 containers being offered have been approved by the
7 ABLE Commission;

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

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

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

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

3 E. Every wine and spirits wholesaler shall maintain its wine
4 and spirits prices through the end of the calendar month. The wine
5 and spirits wholesaler may change any wine and spirits price at the
6 beginning of each calendar month.

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

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

21 SECTION 2. AMENDATORY 37A O.S. 2021, Section 3-123, is
22 amended to read as follows:
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1 Section 3-123. A. It shall be unlawful for any person
2 privileged to sell alcoholic beverages to wholesalers, beer
3 distributors or retailers:

4 1. To discriminate, directly or indirectly, in price between
5 one wine and spirits wholesaler and another wine and spirits
6 wholesaler, when that manufacturer has not designated a single wine
7 and spirits wholesaler, or between one retailer and another retailer
8 purchasing alcoholic beverages bearing the same brand or trade name
9 and of like age and quality, unless otherwise provided by law; or

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

12 B. The ABLE Commission is hereby authorized to promulgate rules
13 which are necessary to carry out the purpose of this section and to
14 prevent its circumvention by offering or giving of any rebate,
15 allowance, free goods, discount or any other thing or service of
16 value; provided, the ~~posting or invoicing of charges per order for~~
17 ~~processing minimum orders or per case for the handling or repacking~~
18 ~~of goods~~ imposition of minimum order, delivery, handling,
19 processing, repackaging, and invoicing fees onto its order by wine
20 and spirits wholesalers and beer distributors ~~for sales in less than~~
21 ~~full case lots~~ shall not constitute a violation of this section.

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

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

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

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

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

1 beverage, caterer, bottle club or special event licensee, wine and
2 spirits wholesaler or beer distributor, their agents or employees.

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

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

11 2. Give or sell product displays, including but not limited to
12 barrels and tubs, provided that the value of such displays does not
13 exceed the limits and restrictions provided in 27 C.F.R., Section
14 6.83;

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

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

21 5. Routinely stock and restock shelves and cold boxes and
22 rotate product that has been sold to the retail licensee by the beer
23 distributor, small brewer self-distributor or brewpub self-
24 distributor, or brewed by the brewer;

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

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

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

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

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

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

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

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

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

15 15. Give or sponsor educational seminars for employees of
16 retailers either at the brewer, beer distributor, small brewer self-
17 distributor or brewpub self-distributor's premises or at the
18 retailer's establishment, including seminars dealing with use of a
19 retailer's equipment, training seminars for employees of retailers
20 or tours of the brewer, beer distributor, small brewer self-
21 distributor, or brewpub self-distributor's plant premises, provided
22 that the brewer, beer distributor, small brewer self-distributor or
23 brewpub self-distributor shall not pay the retailer for the
24 employees' travel, lodging or other expenses in conjunction with an

1 educational seminar but may provide nominal hospitality during the
2 event;

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

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

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

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

1 special event, charitable auction, charitable alcoholic beverage
2 event, or complimentary beverage licensee shall accept any payment
3 or reimbursement, directly or indirectly, for any social media
4 advertising service offered by a brewer, beer distributor, small
5 brewer, small brewer self-distributor or brewpub self-distributor.
6 For purposes of this paragraph, "social media" means a service,
7 platform or site where users communicate with one another and share
8 media, such as pictures, videos, music and blogs, with other users
9 free of charge; or

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

14 F. It shall not be deemed an inducement for a brewer, beer
15 distributor, small brewer self-distributor or brewpub self-
16 distributor to engage in the following marketing activities,
17 provided that the brewer, beer distributor, small brewer self-
18 distributor or brewpub self-distributor shall not pay the retailer's
19 travel costs other than those for local transportation or lodging:

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

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

- 3 a. at a meeting at which the primary purpose is the
4 discussion of business,
- 5 b. at a convention when the food and beverages are
6 offered to all participants, or
- 7 c. at a sports or entertainment event that the
8 representatives of a brewer, beer distributor, small
9 brewer self-distributor or brewpub self-distributor
10 attend with the retailer;

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

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

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

- 3 a. the sign bears conspicuous and substantial advertising
4 matter about the product or the brewer, beer
5 distributor, small brewer self-distributor or brewpub
6 self-distributor which is permanently inscribed or
7 securely affixed,
8 b. the retailer is not compensated, directly or
9 indirectly, such as through a sign company, for
10 displaying the signs, and
11 c. a permanent outdoor sign does not contain the
12 retailer's name.

13 SECTION 3. REPEALER 37A O.S. 2021, Sections 3-116.1, 3-
14 116.2, and 3-116.3, are hereby repealed.

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

19 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
20 March 3, 2022 - DO PASS AS AMENDED
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